

No. 11152

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE COLUMBIAN NATIONAL LIFE INSUR-
ANCE COMPANY, a corporation,
Appellant,
vs.

A. QUANDT & SONS, a co-partnership,
Appellee.

Transcript of Record

Upon Appeal from the District Court of the United States
for the Northern District of California,
Southern Division

FILED

NOV 27 1945

PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the Superior Court of the State of California
in and for the City and County of San Francisco.

No. 329970

A. QUANDT & SONS, a co-partnership,
Plaintiff,

vs.

THE COLUMBIAN NATIONAL LIFE INSURANCE COMPANY, a corporation,
Defendant.

COMPLAINT TO RECOVER LIFE INSURANCE

Plaintiff complains of defendant, and for cause of action alleges:

I.

That The Columbian National Life Insurance Company is, a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with a place of business in the City and County of San Francisco, State of California.

II.

That heretofore, to-wit, on or about the 23rd day of October, 1943, at the City and County of San Francisco, State of California, the defendant in consideration of the payment of Three Hundred Eighty-two and 05/100 (\$382.05) Dollars by Theodore W. Quandt, deceased, and a like amount each year on the 23rd day of October, until five full years premiums have been paid, and of the payment of the premium of Seven Hundred Sixty-four

and 10/100 (\$764.10) Dollars, made, executed and delivered to Theodore W. Quandt, its certain policy of life insurance in writing, Number 275203, a copy of which policy is [1*] annexed hereto and marked Exhibit "A" and made a part hereof as though duly incorporated herein, and whereby said defendant did insure the life of Theodore W. Quandt in the sum of Fifteen Thousand (\$15,000) Dollars.

III.

That A. Quandt & Sons is a co-partnership composed of Q. Quandt and Theodore W. Quandt, and were such co-partnership at all of the times herein mentioned up to the 2nd day of April, 1944, at which time Theodore W. Quandt died, and that said co-partners complied with all of the provisions of Sections 2466 and 2468 of the Civil Code of the State of California.

IV.

That at the time of making and entering into said policy of insurance by the defendant herein, to-wit, on the 23rd day of October, 1943, said Theodore W. Quandt complied with all of the rules, regulations and terms of said policy so issued, and so complied with all of the rules, terms and conditions of said policy at all of the times herein mentioned.

V.

That on or about the 2nd day of April, 1944, at the City and County of San Francisco, State of California, the said Theodore W. Quandt died, and

*Page numbering appearing at foot of page of original certified Transcript of Record.

at the time of his death the said Theodore W. Quandt's policy of insurance as hereinbefore set forth as Exhibit "A", was in full force and effect.

VI.

That said policy of insurance as hereinbefore set out, contracting to pay the loss, to-wit, the sum of Fifteen Thousand (\$15,000) Dollars to the above named plaintiff, was made and entered into in the City and County of San Francisco, State of California, and that said contract of agreement to pay said loss upon the death of the said Theodore W. Quandt is and was to be performed and the obligations and liabilities arising in the City and County of San Francisco, State of California, and that plaintiff relies upon said contract and the whole thereof.

VII.

That on or about the 6th day of April, 1944, the above named plaintiff filed with the above named defendant a proof of the death of the said Theodore W. Quandt, upon the form furnished by the defendant, and according [2] to the terms and conditions of the policy of insurance, and in conformity with the request and desire of defendant, and that said proof of death was filed in writing with said defendant, and that at no time after the making and filing of the proof of death with the defendant by the plaintiff herein has the defendant made any claim or any statement that said proof of death was defective, or that it would not in any

respect conform to the proof of death required by the defendant herein.

VIII.

That during the life of said Theodore W. Quandt, commencing with the 23rd day of October, 1943, up to and including the 6th day of April, 1944, plaintiff, as beneficiary in said policy of insurance paid to the above named defendant each and every and all of the premiums agreed to be paid by said Theodore W. Quandt to said defendant according to the terms and conditions of said policy of insurance, copy of which policy of insurance is hereto attached marked Exhibit "A" and made a part hereof, and that at the time of the death of the said Theodore W. Quandt to-wit on the 2nd day of April, 1944, said policy of insurance was in full force and effect.

IX.

That the above named plaintiff on or about the 6th day of April, 1934, made a demand upon the above named defendant for the payment of said principal of said policy, to-wit, Fifteen Thousand (\$15,000) Dollars, but that said defendant has failed, neglected and refused to pay the same.

X.

That neither the whole nor any part of said sum has been paid but the whole thereof remains due, owing and unpaid from the defendant to the plaintiff.

Wherefore, plaintiff prays judgment in the sum of Fifteen Thousand (\$15,000) Dollars principal,

together with interest thereon from the 6th day of April, 1944 and for costs of suit and for such other and further relief as the Court may deem meet and just.

C. M. DAWSON

WALTER E. DORN

Attorneys for Plaintiff [3]

State of California

City and County of San Francisco—ss.

A. Quandt, being first duly sworn, deposes and says:

That he is the surviving partner of the co-partnership of A. Quandt & Sons, and plaintiff in the above entitled case; that he has read the foregoing Complaint, knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information or belief, and that as to such matters he believes it to be true.

A. QUANDT.

Subscribed and sworn to before me this 28th day of June, 1944.

[Seal]

KATHERINE T. McDONNELL

Notary Public, in and for the City and County of
San Francisco, State of California. [4]

EXHIBIT "A"

Chartered in Massachusetts

Age 52

No. 275203.

The Columbian National Life Insurance Company
of Boston Massachusetts

Hereby Insures the Life of

Theodore W. Quandt

(hereinafter called the Insured)

And Agrees to Pay, at its Home Office in Boston to
A. Quandt and Sons, Without Right of Revocation
(hereinafter called the Beneficiary)

The Sum Insured Fifteen Thousand Dollars upon receipt at its Home Office of due proof of the death of the Insured during the continuance of this contract. If there be no Beneficiary surviving at the death of the Insured the proceeds hereof shall be payable to the Executors, Administrators or Assigns of the Insured.

This Policy is issued in consideration of the application therefor, copy of which is hereto attached and which is made a part of this contract, and of the payment of the premium of Three Hundred Eighty-two and 05/100 Dollars, and of the payment of a like amount in each year on the Twenty-third day of October until five full years' premiums have been paid, and of the payment of the premium of Seven Hundred Sixty-four and 10/100 Dollars, on the Twenty-third day of October in each year thereafter during the continuance of this policy.

The Benefits and Provisions printed on the following pages are part of this contract.

In Witness Whereof, The Columbian National

Exhibit "A"—(Continued)

Life Insurance Company has, by its President and Secretary, executed this contract and caused the same to be duly countersigned at Boston, Massachusetts, on this Twenty-third day of October, 1943.

THE COLUMBIAN NATIONAL
LIFE INSURANCE COM-
PANY

FRANCIS P SEARS

President

and JOHN K HOWARD

Secretary

Conutersigned byPolicy
Registrar

Modified Life Policy

With Change of Premium Rate at End of Five
Years

Premiums Payable for Life

Non-Participating

This policy contains war and aviation restrictions

Form No. 3004

BENEFITS AND PROVISIONS

Premiums. All premiums are payable in advance at the Home Office in Boston, but may be paid to an authorized agent of the Company in exchange for a receipt signed by the President or Secretary and countersigned by said agent. Premiums are payable annually but may be paid on the semi-annual, quarterly or monthly basis at the Company's

Exhibit "A"—(Continued)

published rates effective when this policy was issued, provided the amount of such semi-annual, quarterly or monthly premium be not less than ten dollars.

Modification. No modification of this contract shall be made except over the signature of the President, a Vice President, the Secretary or an Assistant Secretary.

Grace Period. Thirty-one days' grace is allowed for the payment of all premiums after the first, during which period the policy remains in full force. Upon default in payment of any premium, this policy shall lapse, and the Company's only liability shall be such, if any, as is hereinafter provided.

Reinstatement. Should this policy lapse, it may be reinstated at any time upon evidence of insurability satisfactory to the Company and payment of all past due premiums with interest at six per centum per annum and payment or reinstatement of any other indebtedness hereon with interest at said rate, unless the Cash Value has been paid or the Extended Insurance period has expired.

Incontestability. This policy shall be incontestable after it shall have been in force for a period of two years from date of issue except for non-payment of premium, provided, however, that in case of misstatement of age the amount of insurance shall be such as the premium paid would have purchased at the true age. It is free from all conditions as to residence and travel. Death within

Exhibit "A"—(Continued)

two years from date of policy from suicide while sane or insane shall reduce the Company's liability hereunder to the amount of the reserve hereon.

Protection by Statute. This policy and the application therefor constitute the entire contract between the parties and all statements made by the Insured in the application shall, in the absence of fraud, be deemed representations and not warranties, and no statement shall avoid the policy or be used in defence to a claim under it unless contained in the written application and a copy of the same attached hereto.

Assignment. No assignment of this policy shall be effectual against the Company unless it is filed at the Home Office while this policy is in force. The Company assumes no responsibility for the validity of any assignment.

~~Beneficiary. Subject to the rights of any existing Assignee, the Insured may from time to time change the Beneficiary unless otherwise provided herein or by endorsement hereon. Every change of Beneficiary must be made by written notice to the Company at its Home Office on forms satisfactory to the Company. After such written notice has been received the change will relate back to and take effect as of the date the Insured signed said written notice of change whether the Insured be living at the time of receipt of such notice or not, but without prejudice to the Company on account of any payment made by it before receipt of such written notice at its Home Office. If the right to~~

Exhibit "A"—(Continued)

~~change the Beneficiary has been reserved by the Insured, the Insured may, subject to the rights of any existing Assignee, agree with the Company to any change in or amendment to the policy without the consent of any Beneficiary.~~

[Notation on Margin]: "Beneficiary" clause ruled out. The Columbian National Life Insurance Company. Dated October 23rd, 1943.

JOHN K. HOWARD

Secretary

M. E. NORRIS

Policy Registrar

End. #79

Cash Loans. After this policy has an established Cash Value in accordance with the provisions hereof, the Insured without the consent of a revocably designated beneficiary, on the sole security of this policy properly assigned, may borrow at the interest rate of six per centum per annum, payable in advance, any sum not in excess of the Loan Value shown in the Table of Values herein, applicable as hereinafter provided. If interest is not paid when due, it shall be added to the existing loan and bear interest at the same rate. Non-payment of loan or interest shall not avoid the policy until the total indebtedness exceeds the Cash Value hereunder, nor until thirty-one days after the Company has mailed notice of such termination to the Insured and Assignee of record, if any, at their last known address.

Automatic Premium Loans. At the request of

Exhibit "A"—(Continued)

the Insured it is hereby provided that any premiums coming due on this policy after the policy has an established Cash Value, if not paid, will be charged against the policy as a loan, subject to the same terms and conditions as Cash Loans with respect to interest, repayment, continuation, failure to repay and voiding of the policy. If at any time the equity in the policy is not sufficient to continue the insurance in force for a full year, then in that case it will be kept in force for such whole number of days as the remaining equity will allow. While this policy is thus continued in force, all its non-forfeiture provisions remain operative, and the owner may, without furnishing evidence of the insurability of the Insured, resume payment of premiums at any time.

SETTLEMENT OPTIONS

In any cash settlement under this Policy, provided it is not less than One Thousand Dollars and provided further, that the Insured during his lifetime has not designated a method of settlement, the right to choose one of the following options, in lieu of receiving the proceeds in one sum, shall vest in the Payee. These options shall be available only with the consent of the Company if the Payee is a corporation, partnership, association, or assignee, or if the amount of each payment thereunder will be less than ten dollars.

Option (1) The proceeds of this policy may be left with the Company, payable at the death of the

Exhibit "A"—(Continued)

Payee, to bear interest at a rate declared by the Company from year to year. In no event, however, shall the interest rate be less than two and one-half per centum per annum. Interest is payable annually, semi-annually, quarterly or monthly as desired by the Payee. Furthermore, the entire proceeds or any part thereof may be withdrawn by the Payee after giving ninety days' notice in writing to the Company at its Home Office of intention to withdraw, which notice may be waived by the Company at its option.

Option (2) The proceeds hereof may be payable in equal monthly, quarterly, semi-annual or annual instalments in amounts determined at election, as long as the proceeds, together with interest thereon as provided in Option (1) shall suffice, with a final payment of any balance less than one such instalment.

Option (3) The proceeds hereof may be payable in limited monthly, quarterly, semi-annual or annual instalments in accordance with Table A. The income payments shown in the Table are for each One Thousand Dollars of such proceeds.

Option (4) The proceeds hereof may be payable in monthly, quarterly, semi-annual or annual instalments in accordance with Table B for a fixed period of ten, fifteen or twenty years, as selected in the request for this benefit, and as long thereafter as the Payee shall live. The instalments shown in the

Exhibit "A"—(Continued)

Table are for each One Thousand Dollars of proceeds.

Should the Payee die before receiving all of the instalments provided in Table A, or the instalments for the years certain if payable under the provisions of Table B, the unpaid instalments certain commuted on the basis of three per centum per annum compound interest shall be paid to his Executors, Administrators or Assigns unless otherwise agreed upon in writing.

Excess Interest Payments. The Options set forth in Table A and B provide for instalments based on a guaranteed interest rate of three per centum per annum. In addition to each instalment certain after the first, the Payee will receive such interest in excess of the guaranteed rate as the Company may declare for that year on funds remaining with the Company.

Instalment Tables

The Limited Instalments shown in the following Table A and the Instalment Certain in the following Table B are those provided in Settlement Options (3) and (4) respectively for each \$1,000 of proceeds of this policy, the first payment to be made when the proceeds become payable. The instalments are shown on a monthly basis. To determine the amount of annual, semi-annual or quarterly instalments, multiply the monthly instalment by 11.83, 5.96 or 2.99 respectively.

Exhibit "A"—(Continued)

Paid-Up Value. In the event of the lapse of this policy after the policy has an established Cash Value in accordance with the provisions hereof, the policy shall become effective automatically for Paid-up Insurance, payable as provided on the first page hereof, the amount granted being as stated in the Table of Values herein for the number of years the policy has been in force. This Paid-up Insurance shall have increasing Cash and Loan Values.

Extended Insurance. Cash Value. In lieu of such Paid-up Insurance, the Insured may, by written notice filed at the Home Office within the days of grace, elect to have this policy continued as Extended Insurance, payable as provided on the first page hereof, for the period stated in the Table of Values herein, and having a cash surrender value; or may procure the Cash Value on satisfactory release and surrender of the policy.

Payment of Loan and Cash Values. Payment of any loan value other than to pay premiums on any life policies of the Insured in this Company, and payment of any cash value may be deferred for ninety days after the application therefor.

Deduction of Indebtedness. In the payment of any claim under this policy at the death of the Insured, there shall first be deducted any indebtedness to the Company on this policy, including any unpaid premium or portion thereof for the then current policy year. If there be any indebtedness to the Company on this policy including any unpaid

Exhibit "A"—(Continued)

premium or portion thereof to the date of lapse or surrender the Cash and Loan Values shall be diminished thereby, and the Paid-up or Extended Insurance shall be such as may be purchased by the Cash Value so diminished, such Extended Insurance to be for an amount equal to the sum insured less such indebtedness.

Reserve. The reserve on this policy is computed upon the American Experience Table of Mortality with interest at three per centum and for the face amount of the policy by the level premium method modified so that the net annual premium for the first five years is exactly one-half the net annual premium for subsequent years. The Cash or Loan Value is the same as the Net Value of the Paid-up or Extended Insurance provided for herein and equals such reserve less not more than two and one-half per centum of the sum insured. Beginning with the twentieth year the Cash or Loan Value will be the full reserve at the nearest whole dollar per thousand dollars of insurance. The values stated herein at least equal those required by the Statutes of Massachusetts.

Table of Loan and Non-Forfeiture Values

The following table shows the Cash, Loan and Paid-up Insurance values for each One Thousand Dollars of the sum insured and the time for which the sum insured may be extended as Term Insurance. The period of Extended Insurance begins on the date of the defaulted premium and includes

Exhibit "A"—(Continued)

the days of grace. The Cash Value stated below is available only at the end of the year indicated and only if premiums have been paid to the end of the year indicated. If, after the policy has acquired a Cash Value, an instalment of the year's premium is paid between anniversaries in accordance with the provisions of the policy, such payment will proportionately adjust these values.

At end of Policy Years stated below	Cash or Loan Value per each \$1,000 of the sum insured	Paid-Up Insurance per each \$1,000 of the sum insured	Extended Insur- ance, without re- gard to amount of Policy, expiring at end of period stated below	
Yrs.			Yrs.	Days
4	\$ 7	\$ 11	0	133
5	13	21	0	230
6	43	67	1	333
7	73	111	2	356
8	103	154	3	311
9	133	196	4	209
10	163	236	5	59
11	194	277	5	243
12	224	315	6	16
13	254	351	6	126
14	284	387	6	213
15	313	420	6	274
16	342	452	6	320
17	370	483	6	348
18	398	512	7	3
19	433	550	7	67
20	468	587	7	122
21	493	611	7	98
25	589	699	6	279
30	701	792	5	249

M.L. Age 52 (D)

Values for other years will be furnished upon request

Exhibit "A"—(Continued)

The Columbian National Life Insurance Company
Boston, Massachusetts

Rider to be attached to and form a part of
Policy No. 275203.

Life of Theodore W. Quandt.

Death of the insured under any of the following
circumstances is a risk not assumed by the Com-
pany under this policy and any supplement thereto:

a. (1) From any cause during the period of his
Military or Naval service outside the United States
and Canada for any country at war, or

(2) Within six months after termination of such
service if death (wherever occurring) results from
any wounds, injuries, or disease received or suffered
while in such service; or

b. Within two years from the date of issue of
this policy as a result of any act, incident, or hazard
of war occurring outside the United States and
Canada; or

c. As a result of operating or riding in any
species of aircraft or descending therefrom or there-
with except as a fare-paying passenger on a com-
mercial airline flying on a regularly scheduled flight
between definitely established airports.

In the event of such death, the Company will pay
to the beneficiary in full discharge of all liability
the regular premiums paid on this policy or the
reserve, if greater, decreased by the amount of any

Exhibit "A"—(Continued)

indebtedness on or secured by this policy, but in no event shall the amount so payable be more than would be payable under this policy if this rider were not attached.

"United States" as used herein means the forty-eight states and the District of Columbia. "War" includes undeclared war and insurrection. "Military or Naval service" includes, but is not limited to, service in any air force or branch, in any other of the armed forces, or in any auxiliary unit.

The clause in this policy entitled "Incontestability" is hereby amended by the insertion of the words "and except for violation of the conditions of the policy relating (1) to Military or Naval service in time of war, and (2) to aviation" immediately following the words "except for non-payment of premium."

Boston, Mass. 23rd day of October 1943.

THE COLUMBIAN NATIONAL
LIFE INSURANCE COM-
PANY

Countersigned by

M. E. NORRIS

Policy Registrar

JOHN K HOWARD

Secretary [9]

THE COLUMBIAN NATIONAL LIFE INSURANCE COMPANY OF BOSTON, MASSACHUSETTS

THE COLUMBIAN NATIONAL LIFE INSURANCE COMPANY, BOSTON, MASSACHUSETTS
Personal Statements Made by Proposed Insured and recorded by Medical Examiner

Part I of Application for Life Insurance
To Insurance on the Life of: THE INSURED
To whom the following information pertains: First or First Last

1. Are you single, married, widowed, or divorced? Married
2. Date of Birth: April 24 1894
3. Place of Birth: San Francisco
4. Residence Address: 316 Chestnut Street San Francisco
5. Last previous residence: San Francisco
6. What is your occupation? Insurance Salesman
7. What is the nature of the business? Insurance Salesman
8. How many years have you been in the business? 10
9. Have you any intention of changing your residence or occupation, or traveling outside of the Territory (State within the next year)? No
10. Are you now or have you ever been engaged to or married with a woman, widow or child, cohabiting her? No
11. Are you now or have you ever been engaged to or married with a woman, widow or child, cohabiting her? No
12. Are you now or have you ever been engaged to or married with a woman, widow or child, cohabiting her? No

13. State particulars as to any disease: Amount None
14. Has the insured ever been afflicted with any of the following diseases?
15. Mark with "X" the additional benefits desired:
16. Permanent Benefit? Mark with "X"
17. Insure with: Automatic Premium Loan Feature
18. What premium have you paid or amount of this insurance? \$100
19. To whom is the insurance to be paid in event of your death?
20. Are you a member of any lodge or association?

21. What is your occupation?
22. What is the nature of the business?
23. How many years have you been in the business?
24. Have you any intention of changing your residence or occupation, or traveling outside of the Territory (State within the next year)?
25. Are you now or have you ever been engaged to or married with a woman, widow or child, cohabiting her?
26. Are you now or have you ever been engaged to or married with a woman, widow or child, cohabiting her?
27. Are you now or have you ever been engaged to or married with a woman, widow or child, cohabiting her?

28. State particulars as to any disease: Amount None
29. Has the insured ever been afflicted with any of the following diseases?
30. Mark with "X" the additional benefits desired:
31. Permanent Benefit? Mark with "X"
32. Insure with: Automatic Premium Loan Feature
33. What premium have you paid or amount of this insurance? \$100
34. To whom is the insurance to be paid in event of your death?
35. Are you a member of any lodge or association?

36. State particulars as to any disease: Amount None
37. Has the insured ever been afflicted with any of the following diseases?
38. Mark with "X" the additional benefits desired:
39. Permanent Benefit? Mark with "X"
40. Insure with: Automatic Premium Loan Feature
41. What premium have you paid or amount of this insurance? \$100
42. To whom is the insurance to be paid in event of your death?
43. Are you a member of any lodge or association?

44. State particulars as to any disease: Amount None
45. Has the insured ever been afflicted with any of the following diseases?
46. Mark with "X" the additional benefits desired:
47. Permanent Benefit? Mark with "X"
48. Insure with: Automatic Premium Loan Feature
49. What premium have you paid or amount of this insurance? \$100
50. To whom is the insurance to be paid in event of your death?
51. Are you a member of any lodge or association?

Signature of Insured: [Signature]
Signature of Agent: [Signature]
Date: April 24, 1904

Signature of Insured: [Signature]
Signature of Agent: [Signature]
Date: April 24, 1904

52. State particulars as to any disease: Amount None
53. Has the insured ever been afflicted with any of the following diseases?
54. Mark with "X" the additional benefits desired:
55. Permanent Benefit? Mark with "X"
56. Insure with: Automatic Premium Loan Feature
57. What premium have you paid or amount of this insurance? \$100
58. To whom is the insurance to be paid in event of your death?
59. Are you a member of any lodge or association?

60. State particulars as to any disease: Amount None
61. Has the insured ever been afflicted with any of the following diseases?
62. Mark with "X" the additional benefits desired:
63. Permanent Benefit? Mark with "X"
64. Insure with: Automatic Premium Loan Feature
65. What premium have you paid or amount of this insurance? \$100
66. To whom is the insurance to be paid in event of your death?
67. Are you a member of any lodge or association?

68. State particulars as to any disease: Amount None
69. Has the insured ever been afflicted with any of the following diseases?
70. Mark with "X" the additional benefits desired:
71. Permanent Benefit? Mark with "X"
72. Insure with: Automatic Premium Loan Feature
73. What premium have you paid or amount of this insurance? \$100
74. To whom is the insurance to be paid in event of your death?
75. Are you a member of any lodge or association?

Signature of Insured: [Signature]
Signature of Agent: [Signature]
Date: April 24, 1904

Signature of Insured: [Signature]
Signature of Agent: [Signature]
Date: April 24, 1904

Signature of Insured: [Signature]
Signature of Agent: [Signature]
Date: April 24, 1904

Exhibit "A"—(Continued)

The Columbian National Life
Insurance Company
of Boston, Massachusetts

Policy No. 275203.

Insuring the Life of
Theodore W. Quandt
for \$15,000.00 on the

Modified Life Plan

With War & Aviation Restrictions

Premium First Five Years \$382.05

Premium After Five Years \$764.10

Premiums Payable for Life

October Twenty-third

[Title of Superior Court and Cause.]

ORDER FOR REMOVAL TO FEDERAL
COURT AND STAYING PROCEEDINGS

This matter having come on regularly to be heard in the above-entitled court, in the Law and Motion Department thereof, upon the petition and motion of the defendant, The Columbian National Life Insurance Company, a corporation, and it appearing to the court that proper notice of said petition and motion has been given to the plaintiff, and that the above-entitled action is wholly between citizens of different states, and that the matter is controversy exceeds in value the sum of Three Thousand Dollars (\$3,000.00), and that the action is one of which the United States District

Courts are given original jurisdiction, and that said defendant has duly petitioned for a removal thereof to the United States District Court for the Northern District of California, Southern Division, and has filed its bond in connection therewith,

Now, Therefore, It Is Ordered that the within action be and it hereby is transferred and removed to the United States District Court for the Northern District of California, Southern Division, and

It Is Further Ordered that all proceedings herein in the within court be and they hereby are stayed.

Dated: July 17th, 1944.

ROBERT McWILLIAMS

Judge of the Superior Court

[Endorsed]: Filed Aug. 10, 1944.

In the District Court of the United States, in and for the Northern District of California, Southern Division.

No. 23581-G

A. QUANDT & SONS, a co-partnership,
Plaintiff,

vs.

THE COLUMBIAN NATIONAL LIFE INSURANCE COMPANY, a corporation,
Defendant.

ANSWER TO COMPLAINT

Comes now the defendant and answering the plaintiff's complaint on file herein admits, denies and alleges as follows:

I.

The defendant avers that it has no information or belief as to the allegations in paragraph III other than that relating to the death of Theodore W. Quandt sufficient to enable it to answer the same, and placing its denial upon this ground denies each and all of the allegations thereof.

II.

Denies each and all of the allegations of paragraphs IV, VII and X; admits that the plaintiff has filed with the defendant the proofs of loss required under said policy; admits that the plaintiff has demanded the payment of the sum of Fifteen Thousand Dollars (\$15,000) from the defendant; admits that the defendant has refused to pay said sum; denies that said sum or any part thereof is due or owing or unpaid from the defendant to the plaintiff.

And as a first separate answer and defense the defendant alleges:

I.

That on or about November 15, 1943, said Theodore W. Quandt made written application to the defendant for a policy of life insurance; that in reliance upon said application and the representations of said Theodore W. Quandt therein this defendant issued the policy of life insurance referred to in the plaintiff's complaint, and annexed thereto and marked Exhibit "A"; that said written application is attached to and made a part of said policy of insurance.

II.

That part 1 of said application provides in part as follows:

“It is agreed as follows: 1. That the insurance hereby applied for shall not take effect until the issuance and delivery of the policy and the payment of the first premium thereon while the proposed insured is in sound health.”

that said policy of insurance was delivered to said Theodore W. Quandt on December 4, 1943; that at said time said Theodore W. Quandt was not in sound health; that said Theodore W. Quandt at said time was in fact suffering from cancer and later died from said disease of cancer; that by reason thereof the insurance provided in said policy did not take effect.

III.

That upon the discovery of the fact that said Theodore W. Quandt was not in sound health at the time of the delivery of said policy this defendant tendered to the plaintiff herein all of the premiums which had been paid on said policy; that the plaintiff refused to accept said premiums; that the defendant is ready and able and is willing and hereby offers to pay said premiums to the plaintiff or to the clerk of the court for the use and credit of the plaintiff.

And as a second separate answer and defense this defendant alleges:

I.

That on or about November 15, 1943, said Theodore W. Quandt made written application to the defendant for a policy of life insurance; that in reliance upon said application and the representations of said Theodore W. Quandt therein this defendant issued the policy of life insurance referred to in the plaintiff's complaint, and annexed thereto and marked Exhibit "A"; that said written application is attached to and made a part of said policy of insurance.

II.

That in part II of said application the following questions were asked and the following answers were given by said Theodore W. Quandt:

1a. Have you now any disease or disorder? If so, what? No.

7a. Have you had any medical advice during the past five years? Yes.

b. Record the nature and date of each illness. Health check up about June 1943—no abnormality found.

c. What is the name and address of every physician consulted during the past five years? Dr. V. H. Mitchell, San Francisco.

9. Have you ever suffered from, taken treatment for, or consulted a physician for any complaint or affection:

c. Of the heart or blood vessels or abnormal blood pressure (palpitation included)? No.

d. Of the digestive organs (dyspepsia, dysentery, liver complaint, hernia, fistula, gall stones, hepatic colic, vomiting of blood, appendicitis included)? No.

e. Of the urinary or generative organs (gravel, renal colic, stricture, diabetes, gonorrhoea, rising at night to pass urine, included)? No.

10. Have you ever had any disease, illness, injury, or operation other than stated by you above? No.

III.

That the answers given by said Theodore W. Quandt to said questions in said application were false in the following respects; and in making said answers said Theodore W. Quandt concealed from the defendant the following facts:

That within a year prior to the making of said application said Theodore W. Quandt had suffered from and consulted a physician for complaints of the heart; that within six months prior to the making of said application said Theodore W. Quandt had suffered from and had consulted a physician for complaints of the digestive organs and had suffered from and had consulted a physician for complaints of the urinary organs.

IV.

That each of said representations made by said Theodore W. Quandt in making said answers to said questions in said application were material to the risk undertaken by this defendant in issuing its policy of insurance, and each of the matters so con-

cealed by said Theodore W. Quandt were material to the risk undertaken by this defendant in issuing its policy of insurance, and this defendant would not have issued the said policy of insurance had it known that said representations or any of them were false or that said matters had been concealed from it.

V.

That upon discovering said concealments and the falsities of said answers following the death of said Theodore W. Quandt this defendant rescinded the said policy of insurance and tendered to the plaintiff all of the premiums paid to it on account of said policy of insurance; that the plaintiff refused to accept said tender and this defendant is ready and able and is willing to return said premiums to the plaintiff and offers to deposit the same with the clerk of this court to the credit and use of the plaintiff.

Wherefore, this defendant prays that the plaintiff take nothing by reason of his complaint on file herein, and for defendant's costs of suit incurred herein, and for such other and further relief as the court may deem proper.

Dated: August 21, 1944.

KEESLING & KEIL
FRANCIS CARROLL

Attorneys for Defendant.

State of California,
City and County of San Francisco—ss.

Francis Carroll, being first duly sworn, deposes and says:

That he is one of the attorneys for the defendant in the above entitled action; that he makes this verification for and on behalf of the defendant for the defendant is out of the City and County of San Francisco; that he has read said answer and knows the contents thereof; that the same is true of his own knowledge, except as to the matters therein stated upon information or belief, and as to those matters he believes them to be true.

FRANCIS CARROLL

Subscribed and sworn to before me this 21st day of August, 1944.

[Seal]

ALFRED D. MARTIN

Notary Public in and for the City and County of San Francisco, State of California.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed Aug. 22, 1944.

[Title of Court and Cause.]

STIPULATION FOR THE TAKING OF THE
DEPOSITIONS OF HUGH H. CRAW-
FORD, WILLIAM L. SITGREAVES,
HENRY A. PLIMPTON, AND RALPH E.
PIERCE

It Is Hereby Stipulated, by and between the attorneys for the plaintiff and the attorneys for the defendant that the depositions of Hugh W. Crawford, William L. Sitgreaves, Henry A. Plimpton,

and Ralph E. Pierce, witnesses on behalf of the defendant, may be taken in Boston, Massachusetts, before Emilie B. Murray, Notary Public in and for the State of Massachusetts, or any other Notary Public in and for the State of Massachusetts duly qualified in the premises, upon the attached interrogatories and cross interrogatories at any time prior to the trial of the within action convenient to said Notary and said witnesses.

Said depositions and each of them will be taken in the manner provided by and in accordance with Rules 26 to 37 inclusive relating to depositions and discovery contained in the Rules of Civil Procedure for the District Court of the United States, and when so taken and transcribed may be used in evidence in the above entitled action.

Dated: November 1, 1944.

C. M. DAWSON

WALTER E. DORN

Attorneys for plaintiff, A.

Quandt & Sons

KEESLING & KEIL

By WILLIAM H. KEESLING

Attorneys for Defendant

(Here follows Deft's Exh. 1-A for Identification and Deft's Exh. 1-B for Identification, a photostatic copy of part of Exhibit A attached to the Complaint to Recover Life Insurance, and also included in Pl's Exhibit No. 2.)

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This cause having heretofore come on for trial regularly, without a jury, a trial by jury having been expressly waived by the parties in open Court, the cause was tried before the Honorable Louis E. Goodman, Judge of the United States District Court, Northern District of California, Southern Division; C. W. Dawson and Walter E. Dorn appearing as counsel for plaintiff, and Keesling & Keil and Francis Carroll appearing as counsel for defendant, whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined and documentary evidence introduced by the respective parties and the evidence being closed the cause was submitted to the Court for consideration and decision on the 12th day of February, 1945, and after deliberation thereon the Court files its findings and decision in writing and orders that judgment be entered herein in favor of plaintiff in accordance therewith.

The Court makes the following

FINDINGS OF FACT

1. That it is true that the Columbian National Life Insurance Company is a corporation organized and existing under and by virtue of the laws of the State of Massachusetts, with a principal place of business in the City and County of San Francisco, State of California.

2. That it is true that heretofore, to wit, on the 23rd day of October, 1943, at the City and County of San Francisco, State of California, the defendant in consideration of the payment of Three Hundred Eighty two and 05/100 (\$382.05) Dollars by Theodore W. Quandt, deceased, and a like amount each year on the 23rd day of October, until five (5) full year's premium have been paid of the payment of the premium of Seven Hundred Sixty-four and 10/100 (\$764.10) Dollars made, executed and delivered to Theodore W. Quandt its certain policy of life insurance in writing #275203, a copy of which policy of life insurance was annexed to the complaint on file herein, and whereby the defendant did insure the life of Theodore W. Quandt in the sum of Fifteen Thousand Dollars (\$15,000.00).

3. That it is true that A. Quandt & Sons is a co-partnership composed of A. Quandt and Theodore W. Quandt, and were such co-partners prior to the 23rd day of October, 1943, and ever since up to the 2nd day of April, 1944, at which time Theodore W. Quandt died, and that said co-partners complied with all of the provisions of Section 2466 and 2468 of the Code of Civil Procedure of the State of California.

4. That it is true that at the time of making and entering into said policy of insurance by the defendant herein, on the 23rd day of October, 1943, said Theodore W. Quandt complied with all of the rules, regulations and terms of said policy so issued and so complied with all of the rules, terms, and con-

ditions of said policy at all of the times mentioned in the complaint.

5. That it is true that on the 2nd day of April, 1944, at the City and County of San Francisco, State of California, the said Theodore W. Quandt died, and at the time of his death the policy of insurance set forth in the complaint was in full force and effect.

6. That it is true that the said policy of insurance set out in the complaint contracted to pay the loss in the sum of Fifteen Thousand Dollars (\$15,000.00) to the plaintiff herein and that said policy of insurance was made and entered into in the City and County of San Francisco, State of California, and that said contract or agreement to pay said loss upon the death of said Theodore W. Quandt is and was to be performed and the obligations and liabilities arose in the City and County of San Francisco, State of California, and plaintiff relied upon said contract and the whole thereof.

7. That it is true that on the 6th day of April, 1944, plaintiff herein filed with the above named defendant proof of death of said Theodore W. Quandt upon the form furnished by the defendant and according to the terms and conditions of the policy of insurance and in conformity with the request and desire of the defendant, and that said proof of death was filed in writing with said defendant, and that at no time after the filing of said proof of death with the defendant by the plaintiff did defendant make any claim or any statement

that said proof of death was defective or that it did not in any respect conform to the proof of death required by the defendant.

8. That it is true that during the life of said Theodore W. Quandt, commencing with the 23rd day of October, 1943, up to and including the 6th day of April, 1944, plaintiff, as beneficiary in said policy of insurance, paid to the above named defendant each and every, and all the premiums agreed to be paid by said Theodore W. Quandt to said defendant according to the terms and conditions of said policy of insurance, a copy of which was attached to the complaint, and that at the time of the death of said Theodore W. Quandt on the 2nd day of April, 1944, said policy of insurance was in full force and effect.

9. That it is true that on the 6th day of April, 1944, plaintiff herein made a demand upon the above named defendant for the payment of said principal of said policy, to wit: Fifteen Thousand Dollars (\$15,000.00), but that said defendant failed, neglected and refused to pay the same.

10. That neither the whole, nor any part of said sum has been paid, and that the whole thereof remains due, owing and unpaid from defendant to plaintiff.

11. That it is true that the application for a policy of life insurance issued herein contained the following provision:

“It is agreed as follows: 1. That the insurance hereby applied for shall not take effect

until the issuance and delivery of the policy and the payment of the first premium thereon while the proposed insured is in sound health," and that it is true that said policy of insurance was delivered to Theodore W. Quandt on the 4th day of December, 1943. That it is true that at the time of the delivery of said policy of insurance to Theodore W. Quandt, said Theodore W. Quandt, deceased, had complied with all the terms of said policy of insurance and in accordance with the terms of the policy of insurance was in sound health, and that it is true at said time of delivery said policy of insurance did go into full force and effect.

12. That it is not true that the defendant discovered that said Theodore W. Quandt was not in sound health at the time of the delivery of said policy. That it is true that defendant tendered to plaintiff the premiums which had been paid on account of said policy of insurance, and it is also true that plaintiff refused to accept the return of said premiums.

13. That it is not true that within a year prior to the making of the application for life insurance said Theodore W. Quandt had suffered from and consulted a physician for complaints of the heart, and that it is not true that within six months prior to the making of said application for life insurance, said Theodore W. Quandt had suffered from and consulted a physician for complaints of the digestive organs, and it is not true that said Theodore W. Quandt had suffered from and had consulted a

physician for complaints of the urinary organs. That it is true that said Theodore W. Quandt had never had any disease, illness, injury, or operation other than those stated in the application for insurance.

14. That it is not true that Theodore W. Quandt in making application for the life insurance policy concealed any material information from the defendant, or that he concealed any matters material to the risk undertaken by the defendant in issuing its policy of insurance. That it is not true that Theodore W. Quandt made any misrepresentations or any false statements, nor concealed any material or substantial information, and that the defendant issued said policy of insurance being in possession of all of the facts and material information required by the terms and conditions of the application for insurance.

15. That it is not true that the defendant discovered any concealments nor any falsities in the representations and statements made by said Theodore W. Quandt after the death of said Theodore W. Quandt.

16. That all other allegations of the answer of the defendants herein that seem to be or are in conflict with the above findings, or in which no specific finding has been found are untrue.

The Court makes the following Conclusions of Law from the foregoing findings of fact.

That the plaintiff *A. Quandt & Sons*, a co-partnership, is entitled to recover from the defendant *Columbian National Life Insurance Company*, a cor-

poration, and have judgment against said Columbian National Life Insurance Company, a corporation, for the sum of Fifteen Thousand Dollars (\$15,000.00), together with interest thereon at the legal rate from the 14th day of April, 1944, and for costs of suit to be hereafter taxed.

Dated: March 15, 1945.

LOUIS E. GOODMAN

Judge of the United States
District Court.

(Acknowledgment of Receipt of Copy.)

[Endorsed]: Filed Mar. 15, 1945.

In the District Court of the United States in and
for the Northern District of California, South-
ern Division

No. 23561-G

A. QUANDT & SONS, a co-partnership,
Plaintiff,

vs.

THE COLUMBIAN NATIONAL LIFE INSUR-
ANCE COMPANY, a corporation,
Defendant.

JUDGMENT

This cause having heretofore come on for trial regularly without a jury, a trial by jury having been expressly waived by the parties in open Court, the cause was tried before the Honorable Louis E. Goodman, Judge of the United States District

Court, Northern District of California, Southern Division; C. W. Dawson and Walter E. Dorn appearing as counsel for plaintiff and Keesling & Keil and Francis Carroll appearing as counsel for defendant whereupon witnesses on the part of plaintiff and defendant were duly sworn and examined and documentary evidence introduced by the respective parties and the evidence being closed the cause was submitted to the Court for consideration and decision on the 12th day of February, 1945, and after deliberation thereon the Court files its findings and decision in writing and orders that judgment be entered herein in favor of plaintiff in accordance therewith.

Wherefore, by reason of the law and the findings aforesaid, it is ordered, adjudged and decreed that A. Quandt & Sons, a co-partnership, the plaintiff, do have and recover of and from the Columbian National Life Insurance Company, a corporation, the defendant, the sum of Fifteen Thousand Dollars (\$15,000.00) with interest thereon at the rate of 7% per annum from the 14th day of April, 1944, amounting to the sum of Nine Hundred Ten and 04/100 (\$910.04) Dollars, together with plaintiff's costs and disbursements incurred in this action.

Dated: March 16, 1945.

LOUIS E. GOODMAN,

Judge of the U. S. District
Court.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed Mar. 16, 1945.

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE CIRCUIT
COURT OF APPEALS

Notice Is Hereby Given that The Columbian National Life Insurance Company, a corporation, the defendant above named, hereby appeals to the Circuit Court of Appeals for the Ninth Circuit from the final judgment entered in this action on March 16, 1945.

Dated: June 6, 1945.

FRANCIS CARROLL,
KEESLING & KEIL,

Attorneys for Appellant The Columbian National
Life Insurance Company, a corporation.

[Endorsed]: Filed June 13, 1945.

[Title of Court and Cause.]

ORDER EXTENDING TIME FOR FILING
RECORD ON APPEAL

Good cause appearing therefor:

It Is Hereby Ordered that the time for filing of the record on appeal and docketing of the above entitled action in the Appellate Court is hereby extended thirty days from and after July 23, 1945.

Dated: July 23, 1945.

LOUIS E. GOODMAN,

Judge of the District Court of
the United States.

[Endorsed]: Filed July 23, 1945.

[Title of Court and Cause.]

DESIGNATION OF CONTENTS OF RECORD
ON APPEAL

The defendant and appellant, The Columbian National Life Insurance Company, a corporation, hereby designates the following portions of the record and proceedings as the record on appeal:

1. The complaint of the plaintiff, A. Quandt & Sons, a co-partnership.

2. The order for removal to Federal Court.

3. Answer to plaintiff's complaint of defendant, The Columbia National Life Insurance Company, a corporation.

4. Depositions of Hugh W. Crawford, William L. Sitgreaves, Henry A. Plimpton, and Ralph E. Pierce, and the stipulation pursuant to which said depositions were taken.

5. Findings of fact and conclusions of law.

6. The judgment entered in said action.

7. Notice of Appeal.

8. All of the evidence taken and all of the proceedings had at the trial of said action before the Honorable Louis E. Goodman, Judge of the United States District Court.

Dated: August 7, 1945.

FRANCIS CARROLL,

KEESLING & KEIL,

Attorneys for Defendant and
Appellant.

(Acknowledgment of receipt of copy.)

[Endorsed]: Filed Aug. 17, 1945.

[Title of Court and Cause.]

ORDER EXTENDING TIME TO DOCKET

Good cause appearing therefor, it is hereby Ordered that the Appellant herein may have to and including September 11, 1945, to file the Record on Appeal in the United States Circuit Court of Appeals in and for the Ninth Circuit.

Dated: September 1, 1945.

LOUIS E. GOODMAN,

United States District Judge.

[Endorsed]: Filed September 1, 1945.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 23581-G

A. QUANDT & SONS,

Appellee,

vs.

THE COLUMBIAN NATIONAL LIFE INSUR-
ANCE COMPANY, a corporation,

Appellant.

ORDER EXTENDING TIME FOR FILING OF
RECORD ON APPEAL

Upon consideration, and good cause appearing therefor;

It Is Hereby Ordered that the time within which the record on appeal in the above entitled action may be filed in this court is hereby extended thirty days to and including the 11th day of October, 1945.

Dated: September 11, 1945.

FRANCIS A GARRECHT,
Judge of the United States
Circuit Court of Appeals.

[Endorsed]: Filed September 11, 1945. Paul P. O'Brien, Clerk.

A True Copy. Attest: Sept. 28, 1945.

[Seal] PAUL P. O'BRIEN,
Clerk.

[Endorsed]: Filed Sept. 28, 1945.

District Court of the United States, Northern
District of California

CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL

I, C. W. Calbreath, Clerk of the District Court of the United States, for the Northern District of California, do hereby certify that the foregoing 87 pages, numbered from 1 to 87, inclusive, contain a full, true, and correct transcript of the records and proceedings in the case of A. Quandt & Sons, a co-partnership, Plaintiff, vs. The Columbian National Life Insurance Company, a corporation, Defendant, No. 23581-G, as the same now remain on file and of record in my office.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$13.40 and that the said amount has been paid to me by the Attorney for the appellant herein.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court at San Francisco, California, this 1st day of October, A.D. 1945.

[Seal]

C. W. CALBREATH,
Clerk.

By E. VAN BUREN,
Deputy Clerk.

In the Southern Division of the United States District Court in and for the Northern District of California

No. 23,581-G

A. QUANDT & SONS, a co-partnership,
Plaintiff,

vs.

THE COLUMBIAN NATIONAL LIFE INSURANCE COMPANY, a corporation,
Defendant.

Tuesday, January 23, 1945

Before: Hon. Louis E. Goodman, Judge.

Counsel Appearing:

For Plaintiff Walter E. Dorn, Esq.

For Defendant: Francis Carroll, Esq.

JAMES F. MADDEN,

called for the plaintiff; sworn.

The Clerk: Will you state your name to the court?

A. James F. Madden.

Mr. Dorn: Q. Where do you reside, Mr. Madden?

A. 810 Twenty-fifth Avenue, San Francisco.

Q. What is your official position, if any?

A. I am a deputy county clerk.

Q. Of the City and County of San Francisco?

A. Yes.

(Testimony of James F. Madden.)

Q. Mr. Madden, I will show you a document which purports to be a certificate of general partnership transacting business under a fictitious name of Quandt & Sons, and ask you if that is an official record from the County Clerk's Office.

A. Yes, it is.

Q. And that was filed on what date, as appears on there? A. June 23, 1941.

Q. And the names of the partners are Alexander Quandt and Theodore W. Quandt. That was advertised in the Recorder, and if you will, tell us the time and date of the publication.

A. June 24, 1941, and July 1, 8, 15 and 22, 1941.

Q. That was filed when in the County Clerk's Office? A. July 23, 1941.

Mr. Dorn: We will offer this in evidence as an official record showing the organization of the co-partnership of Quandt & Sons, the plaintiff in this case.

Mr. Carroll: No objection.

The Court: Very well. It may be admitted.

(Document marked Plaintiff's Exhibit 1 in evidence.)

Mr. Dorn: Would it be possible to withdraw the original?

The Court: Have you a copy to substitute?

Mr. Dorn: No.

The Court: Would you care to have the reporter copy it and then it may be withdrawn?

Mr. Dorn: That would be all right.

(Testimony of James F. Madden.)

The Court: Is that satisfactory?

Mr. Carroll: Yes.

Mr. Dorn: That is all.

Mr. Carroll: No questions.

J. H. WOOD,

called for plaintiff; sworn.

The Clerk: Will you please state your name to the court?

A. J. H. Wood.

Mr. Dorn: Q. Where do you reside, Mr. Wood?

A. Route 2, Box 437, Los Altos, California.

Q. What is your business?

A. General Agent, the Columbian National Life Insurance Company.

Q. Part of your duties is to write life insurance?

A. Yes.

Q. You solicit life insurance from various people? A. Yes.

Q. You did solicit life insurance from Theodore W. Quandt, the deceased in this case?

A. Yes.

Q. By the way, did you write many policies of insurance for Mr. Quandt in your company?

A. Some seven or eight in two companies over a period of years.

Q. You wrote this particular policy of insurance that is in question now? A. Yes.

Q. I will show you a policy of insurance and

(Testimony of J. H. Wood.)

ask you, Mr. Wood, if that is the policy of insurance that you wrote for Mr. Theodore W. Quandt during his lifetime? A. Yes.

Q. You signed it as an agent for your company?

A. Yes.

Q. Where did you deliver the policy?

A. To Mr. T. W. Quandt, at his office?

Q. Where was that?

A. 374 Guerrero Street, San Francisco.

Q. When you solicited this insurance did you call him in the first instance? A. Yes.

Q. He did not call on you; you called on him?

A. Yes.

Q. When you delivered the policy to him was the premium then due or any sums of money paid to you representing the company? A. Yes.

Q. Did you know, Mr. Quandt very well during his lifetime?

A. Quite well, from the point of view of insurance and some of his personal affairs.

Q. You saw him very often?

A. Reasonably so, yes.

Q. At any of the times you have seen him and talked to him did he complain of any illness?

A. No.

Q. At the time you delivered the policy, as far as appearance was concerned, was he of sound health? A. Perfectly so, yes.

Mr. Dorn: We offer the policy in evidence, if your Honor please, as Plaintiff's Exhibit 2.

Mr. Carroll: No objection.

(Testimony of J. H. Wood.)

The Court: It may be admitted.

(The policy of insurance was marked Plaintiff's Exhibit 2 in evidence.)

Cross-Examination

Mr. Carroll: Q. One question: The other policies you have referred to which were issued by the Columbian National Life Insurance Company have all been paid except this policy and the other policy which was issued at the same time, is that correct? A. Yes.

Mr. Carroll: That is all.

The Court: Do I understand there was another policy issued at the same time?

Mr. Dorn: I believe there was, but that is not before your Honor.

Mr. Carroll: There were various policies issued, but all of the policies issued prior thereto had been paid. These two policies are the ones in dispute.

GEORGE W. COX,

called for the plaintiff; sworn.

The Clerk: Q. Please state your name to the court.

A. George W. Cox.

Mr. Dorn: Q. Doctor, where do you live?

A. I live in San Francisco, 354 Laguna Honda Boulevard.

(Testimony of George W. Cox.)

Q. You are duly and regularly licensed to practice your profession as a physician in the State of California? A. I am.

Q. And I assume you have been practicing for a number of years?

A. I have been here since the last war.

Q. During the lifetime of Theodore W. Quandt did you have occasion to examine him?

A. I did.

Q. I will show you a policy of insurance which is marked Plaintiff's Exhibit 2, and particularly this photostatic copy on the back, and ask you in whose handwriting the longhand is on that policy?

A. That is my own.

Q. You made that handwriting at the time you made your physical examination of Mr. Quandt?

A. I did.

Q. And at the time you made your examination of Mr. Quandt, did you make a thorough examination of him?

A. I think I did, I always do.

Q. You always do? A. Yes.

Q. At the time you made this examination you undoubtedly examined the heart? A. I did.

Q. And what was your finding?

A. It was normal, as far as I could make out.

Q. When you say "normal," that means perfect health, then? A. Yes.

Q. In other words, sound, healthy condition?

A. Yes.

Q. Did you examine his urine at that time?

(Testimony of George W. Cox.)

A. I not only examined it but I sent some to the home office.

Q. What was your finding with reference to that?

A. I observed it was all right or it would have been held up until I had additional specimens. I don't remember, myself. I only know from the facts that there would have been other specimens if it had not been all right. I got a chemical analysis only. They do the microscopic at the home office.

Q. From the chemical analysis you found everything negative? A. Yes.

Q. What examination, if any, did you or could you make of the digestive organs?

A. Well, you bare the abdomen and see if there is evidence of anything unusual in the abdominal cavity.

Q. What did you find?

A. I did not find anything abnormal in it.

Q. As a matter of fact, from your examination did you find the applicant at the time of your examination in sound health at the time?

A. I recommended him for insurance?

Q. Will you be a little more specific?

A. I did.

Q. You found no ailment of any kind as far as the applicant was concerned?

A. Well, I found nothing that would be of consequence to the insurance company at least.

Q. Did you find anything?

A. I do not remember anything that was wrong.

(Testimony of George W. Cox.)

All of my questions were answered in such a way as to be acceptable for insurance.

Q. Did you find any signs that he might at that time have been suffering from injury in any place? A. No.

Q. Did you make any examination when you made your examination for life insurance to ascertain if the patient is suffering from pain?

A. Well, as to the abdomen, we feel over the abdomen. The history, a good deal of it has to be what he tells you?

Q. Did you make any examination of the blood?

A. No, we don't do that.

Q. What would be the usual examination that might be made to discover whether a patient was suffering from cancer?

A. Well, one of the first things we would have would be an X-ray, or make a microscopic examination, but you do not go through that unless you have symptoms.

Q. You found at the time of making this examination no symptoms that warranted you in making any further examination to find out about any cancer? Is that correct?

A. That is correct.

Mr. Dorn: That is all.

Cross-Examination

Mr. Carroll: Q. Doctor, you have looked at the photostatic copy of the application?

A. Yes, I have it here.

(Testimony of George W. Cox.)

Q. I think you stated that the writing there was your writing. A. That is right.

Q. Where did you obtain the answers to the questions that are written there?

A. At his office, where I examined him.

Q. From whom?

A. From him. I questioned him personally. As a matter of fact, there was no one else there when I examined him.

Q. In other words, Doctor, all of the information contained in this application was given to you by Mr. Quandt? A. That is right.

Q. Now, Doctor, if you had known that Mr. Quandt was suffering from a cancer you, of course, would not have concluded that he was in sound health? A. I would not.

Mr. Carroll: That is all.

Redirect Examination

Mr. Dorn: Q. Doctor, is it possible for a patient to be afflicted with cancer and not know it?

A. Surely, it depends upon how far it has advanced.

Q. Then as I take it he might have cancer and not know it, himself?

A. He could for quite some length of time, that is true.

Q. Doctor, I will ask you did you find any symptoms that indicated at the time you made this examination, which is apparently dated the 13th of

(Testimony of George W. Cox.)

November, 1943, that Theodore W. Quandt had any symptoms of cancer?

A. No, I had no symptoms to make me think that.

Q. At the time you made this examination Theodore W. Quandt, the deceased, was in sound health?

A. As far as I could make out he was, yes.

Q. You are a physician, and you would have discovered it, wouldn't you?

A. You have to go a lot on history, because from the questions you ask he could have it without knowing it, and he could have it without knowing it if he did not give you symptoms that would lead you to think that he had.

Mr. Dorn: That is all.

Mr. Carroll: That is all.

Mr. Dorn: May it please your Honor, we have Dr. Mitchell, who was to be a witness, but he had an operation this morning and told me he would be a little late. As a matter of fact, he is operating on a client of mine, so I happen to know about it, but outside of that the plaintiff will rest.

The Court: Do you want to reserve the right to examine him?

Mr. Dorn: We want to reserve the right to examine him. I understand that he has been subpoenaed by the other side, also, so he will be a witness for both, but we would like to have the right to examine him when he arrives.

Mr. Carroll: That is satisfactory.

Mr. Dorn: The plaintiff rests.

(Plaintiff rests.)

Mr. Carroll: If your Honor please, depositions were taken in Boston of various officers of the defendant company, and we would like to offer them in evidence at this time. I do not know how your Honor would like to proceed with regard to the depositions, read them or deem them read in evidence.

The Court: Are there any objections in them?

Mr. Dorn: There is no objection to the manner in which the depositions were taken. There may be some objections to the questions, but so far as I am concerned they might as well be admitted in evidence.

The Court: I can read them later.

Mr. Carroll: Is there any dispute that the amount of premium paid on this policy was tendered to the beneficiary?

Mr. Dorn: No.

Mr. Carroll: It may be stipulated then that the defendant, here, tendered to the beneficiary, and as a matter of fact also the administratrix of the estate, all premiums which were paid upon this policy at the time that the policy was issued.

Mr. Dorn: That is correct.

The Court: May the depositions be considered in evidence?

Mr. Dorn: Yes, your Honor.

(Thereupon the depositions of Hugh W. Crawford, William L. Sitgreaves, Henry A.

Plimpton and Ralph E. Pierce were introduced in evidence.)

Mr. Dorn: I see Dr. Mitchell has arrived, and I think we had better finish with the direct case, as the doctor is pretty busy.

The Court: All right, you may call the doctor.

V. H. MITCHELL,

called as a witness for the plaintiff; sworn.

The Clerk: Will you state your name to the court, please?

A. V. H. Mitchell.

Mr. Dorn: Q. Dr. Mitchell, you reside in the City and County of San Francisco?

A. Yes, I do.

Q. And you are a duly and regularly licensed physician? A. I am.

Q. To practice your profession in the State of California? A. Yes.

Q. And you have practiced for how many years?

A. Since 1927.

Q. Generally speaking, have you any special line of business?

A. Mostly surgery, industrial surgery.

Q. Do you conduct many examinations for insurance companies and railroads in damage cases?

A. Yes.

Q. Did you know Theodore Quandt in his lifetime? A. I knew Mr. Quandt very well.

(Testimony of V. H. Mitchell.)

Q. When you say "very well," generally what do you mean?

A. Well, I not only knew Mr. Quandt as a patient, but I knew Mr. Quandt as a friend.

Q. You saw him quite frequently during his lifetime, not only as a friend but as a patient?

A. Yes.

Q. Doctor, did Theodore Quandt visit your office and have you any record that he did?

A. Yes, he did.

Q. When was the first time that he called at your office?

A. The first time that Mr. Quandt called at my office professionally was on February 10, 1941.

Q. What was he there for?

A. He complained of a common cold with a cough.

Q. Was there a recovery?

A. He received four physio-therapy treatments and on February 14th he had made a complete recovery.

Q. When you say a complete recovery, you mean by that that there was no disease, in medical terms?

A. To all intents and purposes he was well.

Q. Perfectly well from that ailment?

A. Yes.

Q. The next time that he called at your office was when?

A. I next saw him professionally on June 30, 1942.

(Testimony of V. H. Mitchell.)

Q. What did he call there for?

A. He came in complaining of being tired, he had been working quite hard, and he was given a physical examination which was entirely negative, and his hemoglobin at that time was 80, and he was given a tonic, and I did not see him again until March 11, 1943.

Q. He complained of being tired. Was that what you would term medically as a disease of the body that would have a tendency to shorten his life?

A. No, as I said, he had been working hard and he felt under par in that he was just tired, that is all; he had no specific complaint; he had no pains of any sort any place in his body. It was just a question of tiredness.

Q. You made a thorough examination of him at that time?

A. I gave him a complete physical examination at that time.

Q. When you say the hemoglobin was 80, what do you mean by that?

A. Hemoglobin, which is the coloring matter of the blood, gives an indication of what the blood count really is. Hemoglobin of 100 percent is considered perfect. I believe there are very few of us that have hemoglobin of 100 percent; the average is from 85 to 95; we consider those normal limits. His hemoglobin was 80 percent at that time.

Q. The next time you saw him was when?

A. March 11, 1943.

(Testimony of V. H. Mitchell.)

Q. At that time did you have any conversation with him particularly? A. Yes.

Q. What was that conversation?

A. A friend of his had died of heart disease, and he was worried because he had noticed he had a few pains around his heart. At that time he was again given an examination, and his chest was fluoroscoped and it was entirely negative. His hemoglobin at that time was 85 percent and upon examination his heart and lungs were normal, and he received no medicine or no treatment at that time.

Q. What did these pains around the heart indicate to you professionally?

A. Well, they could have been a nervous pain, they could have been a little spasm of the muscles due to a cold, but there was no indication of any organic disease of his heart or lungs.

Q. At that time his heart was in perfect condition? A. Yes.

Q. There was nothing to indicate that there was any affliction of any kind of the heart?

A. No.

Q. You prescribed nothing for him at the time?

A. No.

Q. That is all you ever heard of his affliction of the heart or examination of the heart?

A. That is right.

Q. When did you see him next?

A. On November 18, 1943.

Q. That was a few days after Dr. Cox's examination?

(Testimony of V. H. Mitchell.)

A. Well, I was not aware of that, but anyway he complained of frequency of urine, two or three times during the day, and he also noticed them two or three times during the night, which was noticeable only when he was nervous. On November 19, after he brought a specimen of urine to the office it was sent to the laboratory and it was completely negative.

Q. What would you attribute that excessive urination to?

A. Well, it is sometimes due to an acid condition of the urine which causes frequency of urination, but which does not indicate that there is any organic disease present.

Q. In this instance it was not any organic disease that caused this urination? A. No.

Q. In other words, as far as your medical examination was concerned you found him at that time to be in sound health? A. Yes.

Q. You made further examination aside from the urine at that time?

A. According to my record here I did not, and I don't know whether I made further examination, or not, and I could not answer that question other than I examined his urine, which was his only complaint at that time.

Q. And the examination of the urine was negative? A. Yes.

Q. And he did not return to you again for any further examination in relation to urination, did he? A. No.

(Testimony of V. H. Mitchell.)

Q. Did you see him frequently around about that time?

A. Yes, I would see him occasionally; he called me up and talked to me on occasion; when he was downtown he would drop down to see me at the office.

Q. Friendly visits? A. Yes.

Q. What would you say, Doctor, with reference to his general health on November 18, 1943, at the time you made your last examination?

A. Well, as far as I was aware at that time Mr. Quandt was in perfect health.

Q. When you say perfect, you mean, you are using the word of the policy, sound health?

A. Yes.

Q. You know the ailment that caused the death, or contributed to the death of Mr. Quandt?

A. I do.

Q. What was that?

A. From what I understood, he had a carcinoma, a cancer.

Q. At the various times you made your examination of Mr. Quandt was there anything, or any indication to you as a medical man that he was afflicted with cancer?

A. No, he never complained of any abdominal pains. He made no complaint of his stool. He made no complaint as to vomiting and never made any complaint about any obstruction. In fact, his complaints, as I have testified, was a cold at one

(Testimony of V. H. Mitchell.)

time, the other was frequency of urination, and the other was a tired feeling.

Q. Now, Doctor, is it possible for a patient to be afflicted with cancer such as Mr. Quandt had and he not know it? A. Yes.

Q. As a matter of fact, isn't it quite common that patients have cancer and do not know anything about it over a long period of time?

A. Yes, it is common, especially with different types of cancer in different areas of the body. For example a man might have cancer of the stomach or large intestine and the only time he will get symptoms of that is a feeling of obstruction, which is probably the first indication of a growth in the lower bowel. The other is that sometimes he may get a frequency of stool, which is another indication of cancer. Mr. Quandt had none of those at all; in fact, he had no complaint with his bowels, whatsoever.

Q. And of course you found no indication at any time in your examination or your visit with him that he was afflicted with cancer?

A. No.

Mr. Dorn: That is all.

Cross-Examination

Mr. Carroll: Q. Doctor, did you testify from some notes there that you have? A. Yes.

Q. May I have a look at them?

A. Yes, you have a copy of these.

Q. This is a letter addressed to Mr. Dorn.

(Testimony of V. H. Mitchell.)

A. Yes.

Mr. Dorn: There is nothing private about it, go right ahead and read it.

Mr. Carroll: Q. Where is the rest of the letter, do you know, or is this all of it?

A. That is all the letter.

Q. I see no signature on it. Is there anything else to it?

A. No, that is all there is to it.

Q. You made this up from your records, did you?

A. Yes. The man from the insurance company, I have forgotten his name, from Boston, he was here, and they came to my office and went over the records with me, and then from the records we typed that out and I gave him a copy of it and I another copy to Mr. Dorn.

Q. Doctor, a man who has a cancer is not in sound health, of course?

A. He is not in sound health, but he might not know he has it.

Q. Now, Doctor, when Mr. Quandt came to you and complained of pain around his heart, that was when?

A. March 11, 1943.

Q. Did I understand you to say you had him fluoroscoped at that time?

A. Yes.

Q. Where was he fluoroscoped at that time?

A. At my office.

Q. Who did that? A. I did that.

Q. When did you fluoroscope him?

(Testimony of V. H. Mitchell.)

A. On that day.

Q. Did you see him again after that?

A. I have no record of seeing him after that date except November 18, 1943.

Q. But on this particular occasion when he came to you and complained of pain around his heart you did fluoroscope him at your office?

A. Yes.

Q. What portion of his body did you fluoroscope? A. His chest.

Q. Does that require disrobing, or not?

A. Yes.

Q. So at that time he was disrobed and was placed in front of the fluoroscope and fluoroscoped?

A. That is right.

Q. The next occasion, Doctor, when he complained of frequency of urination I think you mentioned there was a urinalysis made. A. Yes.

Q. Where was the urinalysis made, Doctor?

A. At the Physicians Laboratory, 515 Sutter.

Q. Did you have him take samples of urine to the office there?

A. No, he brought it to my office and it was sent up to the laboratory, which is on the sixth floor.

Q. That is the sixth floor of the same building you are in? A. Yes.

Q. When did you get your report from the laboratory?

A. Oh, I have forgotten that; it usually takes twenty-four hours to get the reports.

(Testimony of V. H. Mitchell.)

Q. Did Mr. Quandt bring the report back to you or did you get it from the laboratory?

A. Oh, no, the report is not given to the patient, at all, it is sent directly to me.

Q. Did you ever talk to Mr. Quandt again after this visit?

A. I have no record of it; he probably called over the telephone and I probably told him the urinalysis was negative.

Q. His complaint was frequency of urine?

A. Frequency of urine.

Q. At night and in the daytime?

A. Yes, two or three times during the day and two or three times during the night.

Mr. Carroll: I think that is all, Doctor.

Mr. Dorn: No further questions. You may be excused.

That is plaintiff's case, your Honor.

GLORIA QUANDT,

called for defendant; sworn.

Mr. Carroll: Q. Miss Quandt, you are, I believe, the daughter of Mr. Theodore W. Quandt?

A. I am.

Q. And I think, if I remember correctly, your mother passed away sometime prior to your father's death?

A. Yes.

Q. When was that?

(Testimony of Gloria Quandt.)

A. January 26, 1941.

Q. Following your mother's death, where were you residing?

A. I was residing at my home at 26 Hazelwood Avenue.

Q. Your father was residing there?

A. Yes.

Q. Did you continue to reside there after Mrs. Quandt's death? A. Yes, for a time.

Q. Can you tell approximately when you stopped residing there?

A. Yes, around March 15, 1944.

Q. That was approximately three weeks or so before your father's death? A. That is right.

Q. Prior to your father's death, Miss Quandt, did he complain to you of any attacks of nausea, or indigestion? A. How much prior?

Q. At any time during that period.

A. No, he did not. I am referring to everything but the last few days.

Mr. Carroll: I would like to refresh the witness' recollection from a statement which counsel has read.

Q. Miss Quandt, I hand you two sheets of yellow paper dated April 27, 1944, some weeks after your father's death, upon which appears the signature, "Gloria L. Quandt" and I ask you if that is your signature, and your handwriting. A. Yes.

Q. I wonder if you would take this and read it over, Miss Quandt, and see if it refreshes your

(Testimony of Gloria Quandt.)

recollection about what I just asked you. Take your time.

The Court: I think while the witness is reading this the court will take a brief recess.

(Recess.)

Mr. Carroll: Q. Have you read the statement over, Miss Quandt? A. Yes, I have.

Q. And since you signed that statement you have spoken to Mr. Backman? A. Yes.

Q. Mr. Backman, I believe, was an investigator for the Columbian National Life Insurance Company? A. Yes.

Q. He interviewed you and wrote this up and then brought it back to you?

A. No, I was there when he wrote it.

Q. You read it over and signed it?

A. Yes.

Q. In regard to the question I just asked you, as to whether your father had ever complained of having nausea or indigestion, I will ask you if this refreshes your recollection:

“Starting in about the end of August, 1943, my father had attacks of nausea lasting about two days in duration. He didn’t vomit, but just complained of his stomach feeling upset. It was accompanied by feeling of indigestion. These occurred about once every six weeks. Since about the first of the year these attacks of nausea seemed to increase in their periods of duration and seemed to be much more energy-taking.”

(Testimony of Gloria Quandt.)

Now, does that refresh your recollection as to the question I asked you, whether your father ever complained of nausea or indigestion?

A. Well, the word "nausea" as it is stated there was suggested to me by the investigator as the better term at the time. The complaint that my father had at that time apparently was feeling upset, and I must have suggested that it was an upset feeling rather than nausea.

Q. How about the word "indigestion"? Did he complain about indigestion, if you object to the word "nausea"?

A. Well, I don't know whether you would call it indigestion. That is the best word I could think of at that time. It was just that he was feeling upset.

Q. You mean you used nausea and indigestion to indicate worry?

A. That is what I tried to explain, the feeling that he had, and those were terms that he had suggested I use, so I used them; they are not untrue, but they are not complete.

Q. I will ask you direct, Miss Quandt, is it true, as you state here, that prior to your father's death he had attacks of indigestion, if you object to the word "nausea", lasting about two days in duration, which increased prior to the time of his death?

A. Would you repeat the question?

Q. Is it true that prior to your father's death he suffered from attacks of indigestion lasting ap-

(Testimony of Gloria Quandt.)

proximately two days and which increased until the time of his death?

A. Not actual indigestion, but upset feeling. That is the only way I could answer it.

Q. Did he complain of an upset stomach to you?

A. No, upset condition from worry, not an upset condition from physical condition.

Mr. Carroll: I would like, if the Court please, to offer this statement in evidence. The witness has said she signed it following a conversation with Mr. Backman, an investigator for the company.

Mr. Dorn: I think, if your Honor please, as the witness is on the stand the statement is not admissible in evidence. She has explained what her statements were.

Mr. Carroll: There will have to be something in the record to show what she was talking about. It had better be marked in some manner so that the witness' testimony as to what she is referring to will be intelligible.

The Court: I will allow it to be marked in evidence. It will be Defendant's Exhibit B. I have marked the depositions Exhibit A.

(The document was marked Defendant's Exhibit B.)

Mr. Carroll: Q. Did your father have any complaint at all, Miss Quandt?

A. During which period are you referring to?

Q. Prior to his death.

A. I believe it is in the statement, general malaise—complaints of general malaise.

(Testimony of Gloria Quandt.)

Q. How long did they have this complaint of general malaise?

A. You mean the period of time it began?

Q. Beginning when?

A. In the fall of the year.

Q. Approximately when?

A. In September.

Q. Beginning in September or after September?

A. Thereabouts, I would say.

Q. You state here, "Starting in about the end of August, 1943, my father had attacks of nausea." Is that about the time the attacks of malaise began?

A. Yes.

Q. How often did those attacks of malaise continue?

A. About every six weeks, or something like that.

Q. How long did they last?

A. One or two days.

Q. They lasted one or two days?

A. Yes, approximately.

Q. Would you define as well as you can what you mean by "malaise"? I notice that term is in here. That is your term and not the investigator's term?

A. Yes.

Q. Will you state what you mean by that?

A. Will you let me describe the entire situation?

The Court: Go ahead.

A. Well, to begin with, in addition to his business troubles we had some very difficult situations at home, and I, myself, was in no better condition mentally; they were difficulties of a nature that

(Testimony of Gloria Quandt.)

would cause upset feelings and worry, not nausea that comes from over-eating or anything like that, but nervousness that would cause an upset feeling.

Q. Tell us what the facts were as to the difficulties?

A. You mean pertaining to the upset at home?

Q. You have been describing that as due to conditions at home.

A. I will say without getting too personal, difficulties with my own residence at home.

Q. You are talking now about the case of your father's remarriage?

A. Yes, that is right. In general, we did not get along at home, and it became very, very difficult, and naturally my father, being a family man, in a situation like that he certainly did not want his home broken up, and it caused him a great deal of worry, as it did myself, I suppose it would in a family, he was worried over it, he was concerned with it, and together with the situation at home there was difficulty in getting his business straightened up, which caused a natural reaction.

Q. You observed that your father was not well and had some physical discomfort and got nauseated and you interpreted it to those conditions that existed?

A. I do not say that he was sick physically, I say it was a feeling that comes along with a general upset, it was not a physical condition.

Q. Your father did complain to you of being nauseated but you ascribed that as a general result

(Testimony of Gloria Quandt.)

of all of these conditions that existed, is that what you are trying to say?

A. I do not think I get my point over. I am not saying he was nauseated. I interpreted it to this upset feeling that he had. I cannot describe it any more.

Q. Let me ask you if this is true: "I don't recall him taking any medicine for the nausea as described about. He would either go home and lie down or lie in the sun for a time until he felt better."

Did your father go home and lie down when he had these attacks?

A. Yes, when he was tired he went home.

Q. Is this statement true: "He didn't vomit but just complained of his stomach feeling upset."?

A. Yes, that was true.

Q. Now, I think you stated that you noticed these symptoms coincident, he made these complaints to you coincident with some marital or domestic difficulty in that time?

A. Yes.

Q. Did I understand you to say your father remarried?

A. Yes.

Q. What was the date of his remarriage?

A. January 11, 1942.

Mr. Carroll: I think that is all.

Cross-Examination

Mr. Dorn: Q. Miss Quandt, when you used the word "nausea" who gave you the word to use in this statement?

A. The investigator.

(Testimony of Gloria Quandt.)

Q. He told you to use that word and that is why you did?

A. I described his condition and said I didn't know how to word it.

Q. He called it that? A. Yes.

Q. And this domestic trouble that you were talking about, in short, was that because Mrs. Quandt had already filed a suit for divorce against your father? A. Yes.

Q. She left home? A. Yes.

Q. And remained away? A. Yes.

Q. And subsequently they patched up their difficulties, we will say, and it was during that period of time that this divorce was going on, and when Mrs. Quandt moved away from the place, is that correct? A. Yes.

Q. And would you say that during that space of time your father was extremely nervous?

A. Yes.

Q. And you attribute that nervousness to difficulty in his business and family troubles at home?

A. Yes.

Q. Did you ever observe at any time your father vomited? A. No.

Q. Did he ever complain to you, other than what you have stated already, of having any difficulty with his heart? A. No.

Q. And of course he did not complain of any pain from the abdomen or in the lower bowels?

A. No, he did not.

Q. You saw your father every day?

(Testimony of Gloria Quandt.)

A. Yes, I did.

Q. And during that same time, from your observation and from conversation with your father, did he say he had any other ailment, other than a cold or something of that character? A. No.

Q. Did your father have any particular hobby on the ice cream side? A. Yes.

Q. And after eating ice cream his stomach was upset? A. Yes.

Q. Was there any other food that he would eat that would upset his stomach?

A. Anything in the sweet line, anything of that type he could not eat excessively, he could not over-eat excessively.

Mr. Dorn: I think that is all.

Redirect Examination

Mr. Carroll: Q. Miss Quandt, might I ask you your age?

A. I am nearly twenty.

Q. The word "indigestion" is a strange word to you? A. Yes.

Q. I am quite doubtful as to what your testimony has been. Do I understand you to say that the complaints you have been referring to were complaints following eating of ice cream?

A. No, that is referring to occasional upsets.

Q. This is something else?

A. I am distinguishing in my mind between a physical upset and an upset from a mental condition.

(Testimony of Gloria Quandt.)

Q. In other words, you are distinguishing between a nausea or upset stomach which you say was caused by your father's mental condition and another experience that came from eating ice cream or something of that sort? A. Yes.

Mr. Carroll: That is all.

MRS. ALICE QUANDT,

called for the defendant; sworn.

Mr. Carroll: Q. Mrs. Quandt, you were the wife of Mr. Theodore W. Quandt?

A. Yes.

Q. Will you say "Yes" or "No," so the reporter can hear you? A. Yes.

Q. The residence of yourself and Mr. Quandt was at 26 Hazelwood Drive? A. Yes.

Q. Were you living there with Mr. Quandt?

Mr. Dorn: Just a minute, we are going to object to any testimony being given by Mrs. Quandt, under section 1881 subdivision (1) of the Code of Civil Procedure, which in short prohibits a wife from testifying against a husband in any matter except a few certain cases, exceptions, and this is not one of the exceptions. The section of the code that I am referring to states there are particular relations in which it is the policy of the law to encourage confidence and to preserve it inviolate, and therefore a person cannot be examined as a witness in the following cases, 1, a husband cannot be ex-

(Testimony of Mrs. Alice Quandt.)

amined for or against his wife without her consent, nor a wife for or against her husband without his consent, nor can either during the marriage or afterwards be without consent of the other examined as to any communication made by one to the other during the marriage.

Mr. Carroll: The question I asked was this: Were you living with Mr. Quandt at 26 Hazelwood Drive in 1943?

A. Yes, from September on.

Q. From September on? A. Yes.

Q. Now, were you aware of Mr. Quandt arising at night for the purpose of urinating?

A. No, I was not.

The Court: She has answered she was not, so you can't be hurt by that.

Mr. Carroll: That is all I wish to ask the witness, unless you have some questions.

Mr. Dorn: No, I have not. If I asked her one then the objection would be no good.

Mr. Carroll: If your Honor please, I have two other witnesses who are doctors, one of whom I arranged to have here at two o'clock and one at two-thirty.

The Court: Very well, we will take a recess until two o'clock p.m.

(Thereupon a recess was taken until 2:00 o'clock p.m.)

Afternoon Session, January 23, 1945

2:00 p.m.

The Court: You may proceed.

Mr. Carroll: Dr. Bostick, will you take the stand please?

DR. WARREN L. BOSTICK,

called for defendant; sworn.

Direct Examination

Mr. Carroll: Q. Doctor, you are a physician and surgeon?

A. Yes, I am.

Q. Licensed to practice in the State of California? A. Yes.

Q. Do you hold an official—I withdraw that.

Q. You are, I believe, Doctor, the official deputy surgeon for the coroner in this City and County of San Francisco? A. Yes.

Q. Are you connected with one of the universities, also, Doctor?

A. University of California.

Q. In what capacity?

A. I am in the Department of Pathology there, instructor.

Q. Is that your specialty, Doctor, pathology?

A. Yes.

Q. Generally speaking, what branch of the science is that?

A. Well, that is a branch of medicine that lends itself entirely to establishing causes of death and of

(Testimony of Dr. Warren L. Bostick.)

studying the background of diseases, and also has a limited amount to do with laboratory work in general.

Q. Doctor, in your official capacity as deputy surgeon, did you have occasion to perform an autopsy on the body of Peter W. Quandt, to determine the cause of his death? A. Yes, I did.

Q. Will you state to the Court, Doctor, what you determined to be the cause of his death?

A. I did a complete examination on the body and upon opening the abdomen I saw immediately a diffused inflammation of all the abdominal contents; and further examination revealed a large mass in the region of the right portion of the abdomen, and this mass was a cancer, which cancer had spread, not only from the right side of the bowel but I also found it distributed and small nodules all through the liver. The cause of death was a rupture of this cancer mass into the free abdominal cavity, with generalized inflammation.

Q. Doctor, can you give us an idea of the size of this cancer?

A. Well, as I examined it, the mass involved an area with a diameter of approximately six inches. It completely obliterated almost all the structure of the bowel on the right side, the large bowel.

Q. Doctor, how many of these autopsies have you done, approximately?

A. About three thousand.

Q. Basing your opinion, Doctor, on your experience and learning, can you indicate to the court

(Testimony of Dr. Warren L. Bostick.)

approximately how long that cancer had been there, or when it had commenced?

Mr. Dorn: That is objected to as irrelevant, incompetent, and immaterial.

The Court: Objection overruled.

A. That cancer had been there at least a year, based on what I have seen in a good many years of cancers, and from the general feeling that it takes a cancer approximately one year to completely surround a segment of the bowel; and this had, of course, much more than done that. It had invaded extensively into the surrounding tissue, and had also spread into the liver.

Mr. Carroll: Q. You say, Doctor, it had been there a minimum of a year?

A. Correct.

Q. In your opinion might it have been there longer? A. It could have been.

Q. Doctor, the date of your examination I believe was the same day the death occurred?

A. I examined the patient on April 2, 1944.

Q. Now, Doctor, will you state to the Court what significance you would attach in a case of a man 52 years of age to recurring complaints of attacks of indigestion?

A. That is somewhat of a big question——

Q. Maybe I could limit it a little bit, Doctor. It covers quite a scope. A. Yes.

Q. If you were trying to determine, Doctor, the cause of a complaint of that nature in a man of

(Testimony of Dr. Warren L. Bostick.)

that age, what causes would you be likely to anticipate?

A. In a man of the age of Mr. Quandt, in his fifties, of course, a history of persistent or recurrent nausea, or what he might even have termed an indigestion—a certain sourness of the stomach, if you wish, naturally would soon bring to the mind, or I mean might bring to the mind the question of a budding carcinoma in the background; and in order to rule out a cancer—that is the same thing as carcinoma—the problem of ulcers of the stomach and problem of heart disease. Those are three big factors that would always come to mind in dealing with a man of that particular age group.

Q. That symptom would be indicative of the possible existence of any one of the things you have mentioned?

A. That would be one of the common signs of those conditions, yes.

Mr. Carroll: You may cross-examine.

Cross-Examination

Mr. Dorn: Q. At the time you examined the body you examined it with reference to all the other vital organs, did you not?

A. Everything excepting the head.

Q. Did you examine the heart?

A. Very carefully, yes.

Q. Did you find it in a normal condition?

A. Yes, in an entirely normal condition for a man of his age.

(Testimony of Dr. Warren L. Bostick.)

Q. That is what I mean, of course.

A. Yes.

Q. There wasn't anything of a diseased character about the heart, was there? A. No.

Q. Did you examine the lungs? A. Yes.

Q. Did you find anything of a diseased character with reference to the lungs?

A. Not in the ordinary sense. The lungs were not well aerated.

Q. Were not well what?

A. Didn't have too much air in them, due, presumably, to the pressure from the diaphragm, because his abdomen was extended. But other than the partial pulmonary collapse his lungs had no disease.

Q. And you examined the liver? A. Yes.

Q. What did you find with reference to that, I mean as far as disease was concerned?

A. Disease—the findings in the liver were quite pertinent to my general interpretation in that the liver had studded through it many nodules of obvious cancer tissue, measuring in diameter from approximately a half inch to three-quarters inch in diameter, indicating that there must have been a cancer to be found some place, and it had already diffusely spread into the liver system.

Q. And you examined the kidneys, also?

A. Yes.

Q. Did you find anything diseased with reference to them? A. No.

(Testimony of Dr. Warren L. Bostick.)

Q. Now, these cancers do not all grow or extend themselves with the same rapidity, do they?

A. No, there is a certain variation.

Q. And in some instances they grow very rapidly and others they grow very slowly?

A. Within limitations.

Q. Well, now, what do you mean by limitations? We are all laymen here.

A. Well, you can—no cancer will spread—you say very rapidly—no cancer would spread from a site to the whole body over night. That might be considered very rapidly. That is an impossibility. No cancer, or practically no cancer would affect—or, to put it another way, no cancer could be so slow that it would never spread, because if that were the case it would not be a cancer. Therefore, it lies within those two extremes.

Q. Well, if the patient was nauseated or had indigestion a few times over a period of five years previous to his death, would you say that that was an indication of cancer?

A. If I knew nothing else about it and it was put in such a casual way—a few times—by that I presume this nausea only occurred, from the intimation of your question I would assume it only occurred in a day, I would admit that over a period of five years I would not be alarmed.

Q. Would a medical examination of the patient indicate that he had a cancer if this examination had taken place on November 18, 1943, having in mind that his death was the 2nd of April, 1944?

(Testimony of Dr. Warren L. Bostick.)

A. It is my feeling that a careful medical examination at that time could have easily have revealed the presence of a mass on the right side of the abdomen to the exploring hand; and certainly one, if it was based upon any suspicion, at all, would have elicited by the use of laboratory procedure or more particularly X-rays.

The Court: You say that would have disclosed itself in November, 1943?

A. That was about five months before the patient's death?

The Court: Yes.

A. At that time the proper X-rays would have very, very easily demonstrated this.

Q. I mean, do you think a doctor should have discovered that in November, 1943?

A. I wouldn't have been at all surprised if that could have been discovered by careful medical examination. This man was not obese; he was—he—a 52-year-old man—Of course, a cursory physical examination might have missed it. That goes without saying, if you don't look.

Mr. Dorn: Q. If a patient was afflicted with cancer how soon from the time of this affliction would it probably produce nausea or indigestion?

A. That is awfully difficult to answer fairly. Nausea and the feeling of biliousness, if you wish, is a manifestation of what we know as reversed peristalsis. That is, the bowel when it has an irritating substance in it—a tumor or in the case of a gall bladder or stones; in the case of this irritating

(Testimony of Dr. Warren L. Bostick.)

mass the bowel will go into periods where the peristalsis, instead of moving normally upon the bowel, reversed. During those periods of the reversed peristalsis, the patient feels a sensation of nausea—he doesn't have to vomit—of general billiousness, so-called. Just exactly when this reversed peristalsis might appear is difficult to say, but it could very easily be quite early in the presence of any tumor or any inflammation or in, for instance, gall-stone, so I can't answer the question too specifically. I would expect it to be relatively early.

Q. When you say early, within what period of time before, we will say, his death? We will confine ourselves to this particular patient now.

A. This particular patient, from what I know of his tumor, I wouldn't—I would not have expected any sensation of nausea to have been present more than two years before his death, due to the cancer.

Q. Well, if he had no nausea prior to about four months or three months before his death——

A. I beg your pardon.

Q. If he had no nausea prior to about four months or three months before his death, what would you say with reference to that?

A. Well, if you will remember my comments a moment ago, of the irritability or the tendency of a bowel to go into these upsets of reversed peristalsis is a factor entirely of bowel irritability. I mean, some people have a very sensitive bowel that will respond to a minimum of stimulation. Some people, of course, have a very sluggish bowel which takes

(Testimony of Dr. Warren L. Bostick.)

a great deal to arouse it into a state of irritability. If this man had only experienced his nausea as recently as three or four months I would say that in all probability he had a bowel that was not particularly sensitive to the tumor which was obviously present at that time.

Q. And you would say that that is perfectly possible to have occurred in this particular instance, now?

A. Well, no, I don't think it is. It is remotely possible. It is unlikely for a tumor of that size not to have caused definite nausea and vomiting well before a period of two months before his death. I would much prefer to say that he had probably had it for six months or even longer, but that can't be said positively.

Mr. Dorn: That is all.

The Court: Doctor, let me ask you a question: With a man in the fifties, the very presence, having indigestion or attacks of indigestion—in fact, busy businessmen have it, don't they, without expecting the presence of malignancy?

A. That is a fair comment.

Q. You have to have some persistency of a regular nature before you would attribute that sort of a symptom to malignancy?

A. Your point is good. Namely, one has to be practical about this. Naturally, you can't examine everyone who has a little nausea for a cancer. However, remember this is not a young man—52, even though we would like to say it is young, it is defi-

(Testimony of Dr. Warren L. Bostick.)

nitely within the cancer age, No. 1; and No. 2, when I answered the question I indicated that I would not be alarmed unless nausea had persisted for a few days. If it persists on repeated occasions for a period of three or four days that is news. If it just follows a particularly difficult day at the times when you are upset, that is not news. Your point is well taken.

The Court: Anything further?

Redirect Examination

Mr. Carroll: Q. Doctor, I think one of the questions I asked you was this: That if you were attempting to eliminate possible causes of recurrent attacks of indigestion, one of the things you would suspect medically was a cancer, is that true?

A. Yes, recurring attacks, recurring unexplained attacks of indigestion in a man of this age would of necessity force the good physician to consider the three or four diseases I mentioned, cancer, or heart disease, or perhaps an ulcer, things of that type.

Q. If a doctor had been informed of this condition and was making an examination to determine if there were any underlying pathology causing this, that is one of the things he would examine?

A. Positively.

Q. Doctor, I think you stated an examination would have revealed this cancer, in your opinion; is it fair to state that that would depend in part on the type of examination?

(Testimony of Dr. Warren L. Bostick.)

A. Of course. I would have to even say it would have to be a careful examination.

Q. What I had in mind particularly is this, Doctor: Would it make any difference whether you were doing the examination with knowledge of the attacks and attempting to eliminate the cause, or if you were making the examination without any knowledge of any history of attacks of indigestion?

A. Well, I think it would make a difference. That goes without saying, with such history you would suspect or at least have in mind some sort of tumor mass, and, of course, tumors of a serious nature are more than serious within the abdomen, and in such cases your attention would be directed to the abdomen. Without any history you might be diverted to other things, so perhaps you would not examine the abdomen at all.

Q. Doctor, is there any question in your mind, basing your answer on your experience and learning, that this cancer existed in this man in November, 1943, approximately five months prior to his death?

A. Oh, absolutely no doubt. There is not the slightest possibility that there was no cancer there. There is, positively.

Mr. Carroll: That is all, Doctor.

Recross-Examination

Mr. Dorn: Q. Doctor, if this Peter Quandt was your friend and patient and he called upon you professionally on February 10, 1941, and you

(Testimony of Dr. Warren L. Bostick.)

treated him for a passing difficulty from which he recovered in a day or so——

The Court: You don't mean 1944, do you?

Mr. Dorn: I am going to give him all of them, your Honor.

The Court: I think you mean February, 1943, don't you?

Mr. Dorn: No. The difficulty he treated was February 14, 1941. I have the doctor's statement.

The Court: Oh, 1941.

Mr. Dorn (Continuing): ——and if the next time you saw him professionally was June 30, 1942, in which the patient complained of being tired, and you made a thorough examination and found nothing the matter with him, and the next time the patient called upon you was March 11, 1943, at which time the patient told you that a friend of his had died of heart trouble and that he had some little pains about his heart, and the doctor, or you made a very thorough examination, fluoroscope and everything else that goes with it, and found nothing; and the next time was November 18, 1943, and the patient complained of urinary troubles, having to urinate more often lately than ordinarily, and the doctor, or you prescribed nothing, and that passed away, would any of those examinations, or any of those matters that I have called to your attention cause you to have a suspicion or an idea that the patient was afflicted with a cancer?

A. No, I can't say that that would. I would have only asked to keep in contact with him. Oh, no.

(Testimony of Dr. Warren L. Bostick.)

Q. I am giving you the examinations as they occurred.

A. From what you state I would say not specifically.

Mr. Dorn: That is all.

Mr. Carroll: That is all, Doctor.

The Court: That is all. You may be excused.

Mr. Carroll: Doctor Heron, will you take the stand, please?

DR. C. IVAN HERON,

called for the defendant; sworn.

Direct Examination

Mr. Carroll: Q. Doctor, you are a physician and surgeon?

A. I am.

Q. Duly licensed and qualified to practice in the State of California? A. I am.

Q. How long have you been practicing, Doctor?

A. Since 1924.

Q. Are you connected with or employed by any insurance companies, Doctor? A. Yes.

Q. And by whom?

A. West Coast Life Insurance Company, as medical director.

Q. How long have you been employed by the West Coast Life? A. Since 1924.

Q. And in what capacity did you first associate yourself with them, Doctor?

(Testimony of Dr. C. Ivan Heron.)

A. As assistant, then associate, and finally medical director.

Q. So that you have been with them approximately 24 years, is that correct, in that capacity?

A. No, about twenty years.

Q. Now, what are your duties as medical director, Doctor?

A. All of the applications which have any medical questions are referred to me for settlement before the policies are—before the applications are approved and the policies issued.

Q. By that you are referring to applications for insurance?

A. That is right.

Q. And in the West Coast Life Insurance Company?

A. That is right.

Q. You pass upon them from a medical viewpoint, as to whether the policy should be issued?

A. That is right.

Q. Are you engaged in that capacity at the present time?

A. I am.

Q. Now, Doctor, are you a member of any societies or organizations of medical examiners of doctors?

A. Yes, two: The Association of Life Insurance Medical Examiners and the Medical Section of the American Life Convention.

Q. And those are composed of other men in other companies in the same capacity as you are in?

A. That is right.

Q. Are you familiar with the practice of life

(Testimony of Dr. C. Ivan Heron.)

insurance companies generally in passing upon applications where medical questions are involved?

A. Yes.

Q. Doctor, I ask you to assume the case of a man 52 years of age who has made application for \$15,000 of insurance on his life; if an application made by such a person, Doctor, revealed that within eight months prior thereto he had consulted a doctor for complaints of pain about his heart, what would be the practice of insurance companies generally in passing upon such an application?

Mr. Dorn: Just a minute. That is objected to as being irrelevant, incompetent, and immaterial, hasn't anything to do with this action.

The Court: How is that—isn't that a question for the court? How would that aid the court in deciding the case?

Mr. Carroll: The case of *Boyer v. U. S. F. & G.*, 206 California, I think the leading case on that in California, establishes the rule that the direct method of putting that question is the one exception, and that that is admissible testimony, as to what the practice of insurance companies generally is. I don't want to anticipate the witness' answer.

The Court: It may not have been the practice—but you are tying it in with a deposition where they said they followed the general practice.

Mr. Carroll: Yes. In other words, the witness cannot testify that the records and concealments were material or the question is material. That is a question for the court. He cannot testify, of

(Testimony of Dr. C. Ivan Heron.)

course, as to the practice of his own company, because that would be immaterial, but he can testify as to what the established practice of companies generally is.

The Court: Well, I don't know whether this would be—that the court would feel inclined to pay much attention to this. I don't say that in a facetious way. But after all the issue in this case is whether or not there was a material concealment.

Mr. Carroll: The only thing is this: It is regarded as proof—at least in the decisions I have regarded, as proof if the matter concealed is material. In other words, if this information that was concealed had been presented to the company, and it is the practice of all companies generally——

The Court: On that theory, however, if you say the court has to determine that, then you are sort of turning the court off from the opportunity of determining that, except as to weighing the evidence as to whether or not that is the correct practice.

Mr. Carroll: Of course, our position is this, your Honor, and perhaps there is a certain inconsistency to this extent—our position is that, and I am convinced that it is the law in this state, that where specific inquiry is made in an application for insurance, a written inquiry and a written answer is asked, that that is material as a matter of law, that is, as a matter of law concealment if the matter is not disclosed. Therefore, in this particular case,

(Testimony of Dr. C. Ivan Heron.)

as to concealment of having consulted a physician for the heart attack, that is a concealment of a material matter.

The Court: We will come to that later. I don't know whether the evidence shows that.

Mr. Dorn: I might say——

The Court: But I think to save time, we haven't any jury here, I will allow the question. Then you may make your motion to strike it out, and I will have it under consideration in the case, itself. We will save a great deal of time in doing it that way. We don't have to worry about whether the jury is going to hear something it should not. I will overrule it, and it will be subject to a motion to strike. You need not make the motion. I will consider that you have; if this testimony is vital to the decision of the case then I can rule on the motion.

Mr. Carroll: Would you read the question, please, Mr. Reporter?

(Question read by the reporter.)

Mr. Carroll: Answer the question.

A. In the first place, the insurance companies would require a report from the attending physician, and the general usages requiring an electrocardiogram to rule out any possible heart diseases, especially in a man 52 years of age, with any kind of chest or upper abdominal pain.

The Court: Suppose the attending physician told you there was nothing at all the matter with the man's heart, that it was some passing disturbance

(Testimony of Dr. C. Ivan Heron.)

of some kind, would you still have the electrocardiogram?

A. Yes, we would.

Mr. Carroll: Q. Doctor, assuming the same case, that the application had disclosed that this man had been obliged to arise at night to pass urine, what would be the practice of insurance companies with to such a matter in the application?

A. Again, to inquire specifically from the attending physician and to require one or more specimens of urine for home office examination, to determine the possibility of infection in the bladder, prostatic trouble, or kidney trouble.

Q. And in the same case, Doctor, assume that for a period of at least months before this application was made that the application had disclosed that the applicant had been suffering from recurring attacks of indigestion or nausea lasting for almost two days in duration, what would be the practice of companies generally in passing upon the application in that regard?

A. With the history of recurring nausea in a man 52, and the occurrence of heart or chest pains, the usual procedure is to defer action on that man's application for a long enough period of time to establish if anything were developing or not. We would require a special report from the attending physician, and would send our own doctors back as a rule for a very careful examination of the abdomen; relying a great deal on the history as given at the time of the application.

(Testimony of Dr. C. Ivan Heron.)

Q. Doctor, the purpose of these further checks is what?

A. To rule out organic disease. And in that, in a man 52, we would think especially of a cardiac thing first, the heart thing first, then we would think of an ulcer or cancer or other organic disease in the abdominal tract giving him the nausea, and that in association with frequency of urination calls for quite a bit of investigation.

Q. Is it fair to state, Doctor, that the practice of insurance companies generally in such a situation as I have mentioned to you have been not to issue a policy until a further investigation had been made to remove the possibility of any underlying pathology?

A. I don't believe any insurance companies with the symptoms you have set forth would have issued a policy without a very careful investigation.

Mr. Carroll: You may cross-examine.

Cross-Examination

Mr. Dorn: Q. In this same case as counsel has described if the examining physician, making his examination for this policy of insurance, made a very thorough examination and determined that the patent was in perfectly sound health, would your company, or the practice of your company be to issue the policy?

Mr. Carroll: If the Court please: In the interest of letting the question state all the facts, I am not certain, myself, whether counsel means to include

(Testimony of Dr. C. Ivan Heron.)

in his question the case where the information has been disclosed or not disclosed.

Mr. Dorn: I am taking the testimony of the witness, Dr. Cox.

Mr. Carroll: You told the witness to assume the same case.

Mr. Dorn: I am assuming the case Dr. Cox examined and testified about.

Mr. Carroll: It is purely in the interest of clarity.

The Court: The answer to that is they did issue the policy.

Mr. Dorn: He is testifying to what the company's practice was. I am asking him if under those conditions his answer would be they would issue the policy.

The Court: I assume his answer would be "Yes" to it.

A. If we had no further medical examination.

Mr. Carroll: The only reason I make the objection is taking the same case——

The Court: I understand what your point it. I think what Mr. Dorn has in mind, if his company or companies generally had the same report that this company had from its doctor they would have written the policy, too.

Mr. Dorn: That is it.

Mr. Carroll: In the absence of this information.

Mr. Dorn: Q. If it had been disclosed that this patient had visited his own physician and had told his own physician a friend of his had died of

(Testimony of Dr. C. Ivan Heron.)

heart trouble and he had a few pains around his heart, and the physician gave him a very thorough examination and found nothing the matter, with the fluoroscope and all the other things that go with it, would the practice of your company be not to issue that policy when they found——

A. (Interrupting) As far as my company goes, with the history of chest pains, if the doctor had not taken a cardiogram we would have gone further into it and requested a cardiogram, or obtained one ourselves.

Q. In the event that those chest pains disappeared in a day or two days and never occurred again, would you have still issued the policy, in the practice of your company, or not?

A. If a cardiogram were negative and we had no history of indigestion.

Q. Now, just confine yourself to my question, don't put anything else in it.

A. If the electrocardiogram were negative and we were very well satisfied there was nothing in the chest, yes.

Q. And I might add that the hemoglobin was at 85 per cent, heart and lungs by examination were negative, no medicine was prescribed; if you had those facts before you would your company have issued the policy?

A. Not with the history of chest pains without a cardiogram, because physical examination of the heart does not disclose coronary diseases and angina pectoris.

(Testimony of Dr. C. Ivan Heron.)

The Court: Sometimes it isn't even disclosed with a cardiogram?

A. Quite true.

Mr. Dorn: Q. If you had learned or it had been disclosed to you that because of family troubles, a divorce in the family and a lot of business troubles the man had gotten particularly nervous, and while he was nervous he had slight indigestion, and he told you that, would your company have issued the insurance?

A. That is the type of risk we looked over carefully because angina pectoris is particularly born and grow on nervous trends, particularly coronary diseases.

Q. With the case of nervousness I have described, would you still have issued the policy, or not?

A. After we had obtained a negative electrocardiogram, yes, provided the cause of nervousness had been removed.

Q. Well, if the urine examination showed negative would your company still have refused to issue the policy?

A. Is your question just referring to the urinary examination?

Q. Let me withdraw the question. I think I started wrong. In the event that it was disclosed that the patient was obliged to arise a time or two at night and during the daytime urinated more than usual, which lasted for a period of three or four days, but if the examination by his physician

(Testimony of Dr. C. Ivan Heron.)

showed—examination of the urine showed that the urine was negative, would your company still refuse to issue a policy?

A. Not provided we had a report from the attending physician.

Q. I am assuming you have those facts I am giving you now. That is why we ask the question in that way. I think that is all.

The Court: Anything else?

Mr. Carroll: That is all, Doctor.

The Court: You may be excused, Doctor.

Mr. Carroll: That is our case, your Honor.

The Court: Let me ask one fact that I didn't make a note of, and I want to be sure of it: The last consultation of the decedent with Dr. Mitchell was after the examination had by the insurance doctor, wasn't it?

Mr. Carroll: Three days after.

Mr. Dorn: Three days after.

The Court: Is there any law involved in this case?

Mr. Dorn: Yes, your Honor. I am satisfied that what counsel just told you, what he says is the law is wrong. For that reason I think there is law involved.

The Court: I mean, isn't this just a question of fact as to whether or not there was some material concealment that the insurance company—that entitled the insurance company not to pay this policy?

Mr. Dorn: They have got two things to prove,

your Honor: That there was a material concealment, and the next thing is that the patient actually had knowledge of it and concealed that fact.

The Court: What I am trying to find out, is there any question of law involved in this matter, as far as the defendant is concerned?

Mr. Carroll: I think there is, your Honor. I will tell you what I think it is.

(Thereupon followed a discussion between the court and counsel, at the conclusion of which the defendant was given ten days within which to file a memorandum, and the plaintiff an equal length of time, if he so desired.)

[Endorsed]: Filed Sep. 24, 1945.

DEPOSITIONS OF HUGH W. CRAWFORD, WILLIAM L. SITGREAVES, HENRY A. PLIMPTON, and RALPH E. PIERCE, taken on behalf of the Defendant, upon written interrogatories, before Emilie Burford Murray, a Notary Public within and for the Commonwealth of Massachusetts, pursuant to Stipulation between counsel for the plaintiff and counsel for the defendant, which is hereto annexed, at the offices of The Columbian National Life Insurance Company, 77 Franklin Street, Boston, Massachusetts, beginning at 2:05 o'clock p. m., on Wednesday, November 15, 1944, and concluding at 12:45 o'clock p. m., on Thursday, November 16, 1944.

Examining Room, Home Office, The Columbian National Life Insurance Company, 77 Franklin Street, Boston, Mass., Wednesday, November 15, 1944, 2:05 p. m.

WILLIAM L. SITGREAVES,

a witness called on behalf of the defendant, having been first duly cautioned and sworn, deposes and says as follows:

In Answer to Direct Interrogatories Submitted to the Notary Public to Be Propounded to the Witness

Q1. Please state your full name, age and place of residence.

A. William Leland Sitgreaves, age 44, 1558 Massachusetts Avenue, Cambridge, 38, Massachusetts.

Q2. What is your occupation or profession?

A. Chief underwriter of The Columbian National Life Insurance Company.

Q3. If you are a physician, please state of what school of medicine you are a graduate, the time of your graduation, and outline briefly your professional activity since the time of your graduation.

A. I am not a physician.

Q4. By whom are you employed?

A. The Columbian National Life Insurance Company.

Q5. In what capacity are you employed, and for how long have you been employed in that capacity?

(Deposition of William L. Sitgreaves.)

A. As the chief underwriter, and in that capacity continuously during the last five years.

Q6. Please state the nature of your duties in the capacities in which you are employed.

A. They are primarily to pass upon the applications for life insurance, to determine the eligibility of the applicants for issue of the amount and plan of insurance requested, and to determine whether the applicant qualifies for insurance at standard rate or at one of the various sub-standard premium classifications. If the risk appears to be sub-standard, it is also part of my duties to determine into which sub-standard classification the particular risk falls.

Q7. Who in The Columbian National Life Insurance Company has the duty of final approval or disapproval of applications to said company for life insurance?

A. That depends upon the size of the case. By "size" I mean amount. For a case of this size the approval must be given by the medical director, the chief underwriter, and the actuary.

Q8. What has been your general training and experience in this line of work, and particularly in connection with the underwriting, acceptance or rejection of life insurance risks?

A. I have been in the life insurance business for nearly 22 years. With the exception of the first year and a half all of my time has been devoted to life insurance underwriting. The first ten years

(Deposition of William L. Sitgreaves.)

were spent in the home office underwriting department of the Aetna Life Insurance Company at Hartford, Connecticut. The next seven years were spent as the manager of the underwriting department of that company's New York City agencies. And during the last five years I have been the chief underwriter of The Columbian National Life Insurance Company in Boston.

Q9. What has been your general experience with regard to the usual practice of life insurance companies as to the underwriting, acceptance and rejection of life insurance risks pertaining to policies of life insurance?

A. As I understand the question, the information desired is as to my knowledge of the practices of life insurance companies in general. I am familiar with those practices through membership in the Home Office Life Underwriters Association, through inter-company correspondence and discussions, and in particular because of The Columbian National's practice of accepting re-insurance from other companies. Because of this acceptance of re-insurance I have had ample opportunity to review the underwriting papers and decisions on particular cases of many of the life insurance companies operating throughout the United States.

Q10. If you are familiar with it, please state what is the practice of life insurance companies generally with respect to the underwriting, acceptance, and rejection of life insurance risks.

A. My understanding of that question is that

(Deposition of William L. Sitgreaves.)

what is desired is a general idea of the standards employed by companies. Naturally these vary somewhat from company to company. Some companies pursue a very liberal underwriting practice, while others follow a much more rigid practice. In between these extremes there are many companies whose practices are about midway or possibly inclining toward either of the extremes. Then too the practices of a company may vary from time to time. By that I mean, that during a period following favorable mortality experience and general progress in the business a company may be more lenient than the average, but in later years may adopt a different practice and become more conservative. It is also possible that a company which has been following a conservative practice may at a later period become more lenient, particularly as to certain classes of risks. As an example of the last point, I might state that in recent years more and more companies which previously wrote life insurance only at standard rate have entered the sub-standard field, so that today there are very few companies who confine their acceptance to standard risks only.

Q11. State what is the practice of The Columbian National Life Insurance Company in regard to the practices followed by other life insurance companies generally with respect to the underwriting, acceptance, or rejection of applications for policies of life insurance.

A. That is a difficult question to answer except

(Deposition of William L. Sitgreaves.)

in the very broadest terms. Our practices are neither as lenient as the most lenient companies, nor as conservative as the most conservative, as far as general underwriting is concerned. There are naturally some classes of risks on which we are more lenient than the average company, but in general our underwriting practice is about in the middle of the road.

Q12. Did the company follow its usual practice in passing upon the application of Theodore W. Quandt for insurance?

A. Yes; it did.

Q13. I hand you herewith what purports to be the original application for a policy of life insurance on the life of Theodore W. Quandt in the sum of \$15,000, bearing the date in part 1 "November 15, 1943," and in part 2 "November 13, 1943," and bearing the signature of Theodore W. Quandt, and ask you to state whether this document has heretofore been examined by you?

A. It has.

Q14. Will you please hand the document just identified by you to the Notary Public and request that the same be marked Defendant's Exhibit 1 for Identification?

A. I do so.

(Original application of Theodore W. Quandt for life insurance in the sum of \$15,000, part 1 dated November 15, 1943, and part 2 dated November 13, 1943, marked respectively

(Deposition of William L. Sitgreaves.)

Defendant's Exhibit 1A for Identification and
Defendant's Exhibit 1B for Identification.)

Q15. Will you please state when and where you first saw the document which has been previously identified by you and marked by the Notary Public as Defendant's Exhibit 1 for Identification?

A. I first saw the application at some time between Saturday, November 27, 1943, and Tuesday, November 30, 1943, but I am unable to state exactly which date between those extremes. I first saw it in the home office of the Columbian National Life Insurance Company at 77 Franklin Street, Boston.

Q16. What action, if any, was taken by you with respect to the said application?

A. I approved it.

Q17. What action, if any, was taken upon said application by The Columbian National Life Insurance Company, as a result of your action or that of any other official of the company?

A. As the result of the approval by others and myself the Company accepted the risk and issued policy No. 275203 in the amount of \$15,000 payable to A. Quandt & Sons as irrevocable beneficiary.

Q18. Did you, in approving the application herein marked as Defendant's Exhibit 1 for Identification, rely upon the information contained in said application?

A. I did.

Q19. If you had disapproved the application marked herein as Defendant's Exhibit 1 for Identification, would the policy of life insurance num-

(Deposition of William L. Sitgreaves.)

bered 275203 have been issued to Theodore W. Quandt by The Columbian National Life Insurance Company?

A. It would not.

Q20. I direct your attention to the application previously identified by you and marked as Defendant's Exhibit 1 for Identification, and particularly to the questions in part 2 thereof "Personal Statements made by Proposed Insured and Recorded by Medical Examiner," and particularly to the questions thereof numbered 1-a, 7-a, 7-b, and 7-c, 9, 9-c, 9-d, 9-e and 10, and the answers to said questions, and ask you whether or not at the time you approved said application you had any information or knowledge other than that given by the answers to said questions?

A. I did not.

Q21. In approving said application for said policy of life insurance did you consider the answers to questions 1-a, 7-a, 7-b, and 7-c, 9, 9-c, 9-d, 9-e and 10 contained in part 2 of said application material to the risk insured against?

A. Definitely yes.

Q22. If at the time said application was submitted to you you had known that the then present condition of health of Theodore W. Quandt was not good, what action would have been taken by you on said application?

A. I would not have approved the application at that time, and would have investigated to determine the degree of his departure from good health.

(Deposition of William L. Sitgreaves.)

Q23. If at the time said application for said policy of life insurance was approved by you you had known that the said Theodore W. Quandt was then suffering from and had been suffering from a serious illness, what action would have been taken by you?

A. I would not have approved the application at that time, but would have postponed by decision in order that an investigation might be conducted to determine the character, degree, and prognosis of any such illness.

Q24. If at the time said application for insurance was submitted to you you had known that the said Theodore W. Quandt was suffering from a carcinoma of the colon, what action would have been taken by you.

A. I would have declined the risk.

Q25. Please state by what name a carcinoma is generally known to the layman.

A. Cancer.

Q26. If at the time said application was approved by you you had known that said Theodore W. Quandt had consulted a physician on or about March 11, 1943, for a complaint of pains around his heart, what action would have been taken by you on the said application?

A. I would not have approved the application but would have postponed my decision until an investigation could be conducted to determine the underlying pathology and the probable effect upon his longevity of such a medical history.

(Deposition of William L. Sitgreaves.)

Q27. If at the time said application for life insurance was approved by you you had known that said Theodore W. Quandt, commencing with the end of August, 1943, had suffered attacks of nausea which lasted about two days in duration, and which occurred once every six weeks, what action would have been taken by you on said application?

A. The procedure would have been the same as indicated in the answer to the preceding question.

Q28. If at the time said application for said policy of life insurance was approved by you you had known that said Theodore W. Quandt prior to the date of said application and during the month of November had suffered from complaints of the urinary organs in that he was obliged to rise at night to pass urine, what action would have been taken by you on said application?

A. The action I would have taken is similar to that described in the answers to the preceding two questions, with the further doubt as to whether after the supplemental examinations had been completed insurance could have been granted at standard rate in any event, inasmuch as we have come to believe that nocturia occurring in middle life may be the forerunner of serious heart disease.

Q29. Please state the reasons for the answers given by you to the preceding questions.

A. My understanding of this question is that it refers to the answers given to Questions 22 through 28 inclusive. My approval of the application was based upon the assumption that the

(Deposition of William L. Sitgreaves.)

information contained in part 2 of the application was correct as to Mr. Quandt's medical history, and that it indicated that he had experienced no illness or ailment which would adversely affect his longevity. Had any of the conditions described in Questions 22 through 28, inclusive, have been known to me or suspected by me, I would have withheld my approval because any of such conditions would indicate that he had not always been in good health and that possibly his longevity might be affected as a result. Certainly further investigation of any such history would be necessary before I would feel warranted in approving his application for insurance at standard rate. For a condition such as carcinoma of the colon the risk would unquestionably be uninsurable. As for some of the other impairments mentioned in those questions, only further investigation could determine whether the risk was acceptable at all, and if so, on what rate basis.

In Answer to Cross Interrogatories Submitted to
the Notary Public to Be Propounded to the
Witness

XQ1. If your answer to Interrogatory No. 11 is that you follow the practices of the other life insurance companies as well as The Columbian National Life Insurance Company in passing upon applications for life insurance, do those practices require you to reject an application if you knew at the time of passing upon the application that

(Deposition of William L. Sitgreaves.)

Theodore W. Quandt had a common cold on about February 10, 1941?

A. Not for that reason.

XQ2. Do you consider a common cold a bodily disease or infirmity?

A. That is a question of degree. An applicant who is suffering from a common cold at the time of his application is usually postponed until he has recovered from the cold; but once having fully recovered, a history of a common cold would not be considered as an impairment of sufficient importance by itself to warrant unfavorable action on his application.

XQ3. If Theodore W. Quandt had been afflicted with a common cold in February of 1941, and said common cold had passed away within a few days thereafter, would you say that Theodore W. Quandt was not in sound health at the time you passed upon his application for life insurance?

A. He might or might not be in sound health at the later date. I would not say that he was not in sound health merely because he had had such an experience.

XQ4. If at the time you passed upon the application of Theodore W. Quandt for life insurance, Defendant's Exhibit 1 for Identification, said application had disclosed that on February 10, 1941, he had a common cold which passed away within three or four days, would you have rejected the application?

A. Not for that reason.

(Deposition of William L. Sitgreaves.)

XQ5. If said application, part 2, disclosed at the time you passed upon the application that Theodore W. Quandt had been afflicted with a common cold on February 10, 1941, for which his physician had prescribed four physio-therapy treatments, and that said Theodore W. Quandt had completely recovered by February 14, 1941, would you have rejected his application?

A. Again not for that reason.

XQ6. If at the time you passed upon the application as set forth in Defendant's Exhibit 1 for Identification, said application had disclosed that on June 30, 1942, Theodore W. Quandt had complained to his physician that he was tired, and that the examining physician had reported his physical condition as negative, his hemoglobin 80 per cent, would you have considered that Theodore W. Quandt was at that time not in sound health?

A. I would have considered that he was not in sound health in June, 1942; but that would not necessarily mean that he was not in sound health in November of 1943, as he might have been restored to full health in the meantime. On the other hand, he might not have been in sound health in November, 1943, for some other reason.

XQ7. If at the time you passed upon the application as set forth in Defendant's Exhibit 1 for Identification, said application had disclosed that on June 30, 1942, Theodore W. Quandt had complained to his physician that he was tired, and that the examining physician had reported his physical condition as negative, his hemoglobin 80 per

(Deposition of William L. Sitgreaves.)

cent, would you at that time have rejected his application?

A. I would not have rejected his application for that reason, but would have postponed my decision until a further investigation of the history could be made.

XQ8. If the application of Theodore W. Quandt for life insurance in Columbian National Life Insurance Company, Defendant's Exhibit 1 for Identification, had disclosed in addition to the other information that on March 11, 1943, Theodore W. Quandt had visited his physician and had stated that a friend of his died of heart trouble and that he, Theodore W. Quandt, had noticed a few pains around his heart, and that said physician had fluoroscoped his chest, which was negative, and that his hemoglobin was 85 per cent, and that the examination of his heart and lungs were negative, and that no medicine or treatment was prescribed, would you say that at the time you passed upon the application Theodore W. Quandt was not in sound health?

A. With only such information I would not be prepared to say whether he was or was not in sound health. Before determining the significance of such a history I would feel it necessary to withhold any decision and pursue an investigation.

XQ9. If the application of Theodore W. Quandt for life insurance in Columbia National Life Insurance Company, Defendant's Exhibit 1 for Identification, had disclosed in addition to the other in-

(Deposition of William L. Sitgreaves.)

formation that on March 11, 1943, Theodore W. Quandt had visited his physician and had stated that a friend of his died of heart trouble, and that he, Theodore W. Quandt, had noticed a few pains around his heart, and that said physician had fluoroscoped his chest, which was negative, and that his hemoglobin was 85 per cent, and that the examination of his heart and lungs was negative, and that no medicine or treatment was prescribed, would you have approved the application?

A. I would not have approved the application at that time. Instead I would have postponed my decision and would have conducted a further investigation. Moreover, it is doubtful whether the application would ever have been approved for insurance at standard rate if such a history had been known, even though the further investigation proved quite favorable.

XQ10. If the application, part 2 of Defendant's Exhibit 1 for Identification, had in addition to the other information contained therein disclosed that on February 10, 1941, Theodore W. Quandt had a common cold which passed away completely in three days and that on June 30, 1942, said Theodore W. Quandt complained of being tired but that a physical examination was negative and his hemoglobin was 80 per cent, and that on March 11, 1943, said Theodore W. Quandt complained of a few pains around his heart and that a fluoroscope showed that his chest was negative and his hemoglobin 85 per cent, his heart and lungs by examination were nega-

(Deposition of William L. Sitgreaves.)

tive, and no medicine or treatment was prescribed, would you have approved the application?

A. I would not have approved it for insurance at standard rate. Instead I would have postponed a decision and pursued an investigation of the several items in the medical history. In underwriting a risk we consider a combination of two or more impairments or a history of two or more periods of serious illness as decidedly more significant than either impairment or either period of illness standing alone, since experience shows that many such situations are inter-related and may signify a serious impairment of longevity.

XQ11. Do you in passing upon applications for life insurance reject the application for temporary and passing ailments?

A. We temporarily reject them in the sense that we postpone approval of the risk until it can be determined whether the individual has fully recovered, and what effect, if any, the illness has had on his prospect of longevity.

XY12. Do you consider the matters asked in this deposition under cross-interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 bodily disease or infirmity of the applicant?

A. I so consider all of them in the sense that disease is a general term which signifies any departure from good health. Some of the conditions described in these questions are generally considered as only slight departures from good health, while others would be considered much more sig-

(Deposition of William L. Sitgreaves.)

nificant, particularly from the standpoint of an underwriter. In this way it becomes a matter of degree.

XQ13. If at the time you passed upon the application, as set forth in Defendant's Exhibit 1 for Identification, Theodore W. Quandt was suffering from carcinoma of the colon, but Theodore W. Quandt did not know that he was suffering from such ailment, would you in that event have approved the application for life insurance?

A. I would not have approved the application had I known that he was suffering from any such disease, regardless of whether I knew that he was not aware of his condition.

XQ14. If at the time of said application for said policy of life insurance, Defendant's Exhibit 1 for Identification, you had known that said Theodore W. Quandt had after the date of said application consulted a physician and complained of frequency of urine, and that said physician had advised that it was due to nervousness, that a sample of the urine by laboratory tests was completely negative, would you have rejected the application?

A. Instead of rejecting the application outright, I would have withheld a decision, and would have pursued an investigation, including re-examination of Mr. Quandt and re-examination of specimens of his urine, if the other parts of the further investigation proved favorable.

XQ15. Prior to answering the interrogatories

(Deposition of William L. Sitgreaves.)

and cross-interrogatories herein, did anyone tell you or suggest to you what your answers should be?

A. Nobody did.

XQ16. Prior to answering the interrogatories and cross-interrogatories propounded in this case, have you talked with anyone with reference to your answers?

A. Yes, I have.

XQ17. Did you have any consultation or discussion of any kind or character with anyone else whose deposition is being taken in this case with reference to the answers that you would give to said questions?

A. I did not.

XQ18. In passing upon the application for life insurance for Theodore W. Quandt, Defendant's Exhibit 1 for Identification, did you consider the fact that on November 18, 1943, Theodore W. Quandt had consulted his physician complaining of frequency of urine?

A. I did not, because it was unknown to me.

WILLIAM L. SITGREAVES.

RALPH E. PIERCE,

a witness called on behalf of the defendant, having been first duly cautioned and sworn, deposes and says as follows:

In Answer to Direct Interrogatories Submitted to the Notary Public to be Propounded to the Witness.

(Deposition of Ralph E. Pierce.)

Q1. Please state your full name, age, and place of residence.

A. Ralph E. Pierce, 74, 267 Newbury Street, Boston.

Q2. By whom are you employed?

A. The Columbian National Life Insurance Company.

Q3. In what capacity are employed and for how long have you been employed in that capacity?

A. Assistant secretary, 33 years.

Q4. What are your duties in such capacity with The Columbian National Life Insurance Company?

A. I am a member of the Claims Committee, and I also handle various other matters connected with the Company business.

Q5. Please examine the document attached to these interrogatories and previously identified by Dr. Hugh Crawford as Defendant's Exhibit 1. Please state if you have ever seen this document before.

A. Yes.

Q6. If your answer to the preceding interrogatory is in the affirmative, will you please state the date upon which you first saw this document?

A. To the best of my recollection, I saw it immediately after the insured's death had been reported.

Q7. What, if any, events occurred which caused you to refer to this document which has been previously identified and marked Defendant's Exhibit 1 for Identification herein?

(Deposition of Ralph E. Pierce.)

A. The report of the insured's death.

Q8. Will you please state the circumstances surrounding your examination of the document previously identified and marked Defendant's Exhibit 1 for Identification herein?

A. The insured's death had been reported, and I was considering what action the Company should take.

Q9. As a member of the Claims Committee of The Columbian National Life Insurance Company what are your duties in connection with that committee?

A. To examine proofs submitted in connection with claims under policies, and to pass upon the claims, either approving or rejecting them.

Q10. Did you during the year 1944 receive a claim for or proofs of death under a policy of insurance numbered 275203, issued upon the life of Theodore W. Quandt?

A. Yes.

Q11. If your answer to the preceding interrogatory is in the affirmative, will you please state the dates upon which you received said claims or proofs of death?

A. April 14, 1944.

Q12. What, if any, action was taken by you upon receipt of said claims or proofs of death?

A. In conjunction with other members of the Claims Committee I caused the institution of an investigation regarding the circumstances of the death and the past history of the insured.

(Deposition of Ralph E. Pierce.)

Q13. Prior to the receipt of said claims or proofs of death did you or any other person connected with The Columbian National Life Insurance Company have any knowledge whatsoever that Theodore W. Quandt had ever suffered from a serious illness?

A. I did not have any such knowledge, and none of the Company files give any indication of such knowledge. No one connected with the Company has ever indicated to me any such knowledge.

Q14. Prior to the receipt by you of said claims or proofs of death did you or any other person connected with The Columbian National Life Insurance Company have any knowledge that the said Theodore W. Quandt had ever consulted a physician during the three years next preceding the date of his application for insurance other than is stated in said application?

A. The answer is the same as the answer to Question 13.

Q15. Prior to the receipt by you of claims or proofs of death, or by any other person connected with The Columbian National Life Insurance Company, did you have any knowledge that the said Theodore W. Quandt had ever suffered from and consulted a physician for pains located around and involving his heart on or about March 11, 1943?

A. The answer is the same as the answer to Question 13.

Q16. Prior to the receipt by you of said claims or proofs of death did you or any other person

(Deposition of Ralph E. Pierce.)

connected with The Columbian National Life Insurance Company have any knowledge that said Theodore W. Quandt has suffered from attacks of nausea beginning at the end of August, 1943?

A. The answer is the same as the answer to Question 13.

Q17. Prior to the receipt by you of said claims or proofs of death did you or any other person connected with said company have any knowledge that the said Theodore W. Quandt in November of 1943 had suffered from complaints of the urinary organs, in that he had suffered from the necessity of rising at night to pass urine?

A. The answer is the same as the answer to Question 13.

Q18. When, if ever, did you or any other person connected with the Company first learn of the facts referred to in the preceding questions?

A. Shortly after the death of the insured.

Q19. Did you or any other person connected with the Company have any knowledge that said Theodore W. Quandt at any time was suffering from a carcinoma of the colon?

A. I have not been able to discover that anyone connected with the Company had any such knowledge prior to the death of the insured.

Q20. When did you or any other person connected with the Company have any knowledge that the answers to the questions contained in part 2 of the application for insurance made by said Theo-

(Deposition of Ralph E. Pierce.)

dore W. Quandt numbered 1-a, 7-a, 7-b, 7-c, 9, 9-c, 9-d, 9-e, and 10 therein were false and untrue?

A. Shortly after the death of the insured.

Q21. Did you refer to the answers contained in the application for insurance herein previously identified when you received the claims or proofs of death submitted by A. Quandt & Sons?

A. Yes.

Q22. What if any action was taken by you when the claims or proofs of death were submitted on the policy of insurance numbered 275203?

A. We instituted an investigation, as I have already stated.

Q23. If your answer to the preceding interrogatory is that you caused an investigation to be carried on surrounding the death of the insured, Theodore W. Quandt, will you please state when you received the information which resulted from said investigation?

A. We received most of it in April, 1944, or shortly thereafter.

Q25. Was the information received from said investigation the first knowledge that you or The Columbian National Life Insurance Company had that the representations contained in the application for the policy of insurance sued upon herein and previously identified, and particularly the answers to questions therein contained, were false and untrue?

(No cross interrogatories.)

RALPH E. PIERCE

HENRY A. PLIMPTON,

a witness called on behalf of the defendant, having been first duly cautioned and sworn, deposes and says as follows:

In Answer to Direct Interrogatories Submitted to the Notary Public to be Propounded to the Witness

Q1. Please state your full name, age and place of residence.

A. Henry A. Plimpton; 42, 35 Gammons Road, Waban, Massachusetts.

Q2. What is your occupation or profession?

A. Actuary.

Q3. If you are a physician, please state of what school of medicine you are a graduate, the time of your graduation, and outline briefly your professional activity since the time of your graduation.

A. I am not a physician.

Q4. By whom are you employed?

A. The Columbian National Life Insurance Company.

Q5. In what capacity are you employed, and for how long have you been employed in that capacity?

A. Actuary, seven years.

Q6. Please state the nature of your duties in the capacities in which you are employed.

A. The usual duties of an actuary, including some underwriting.

Q7. Who in The Columbian National Life In-

(Deposition of Henry A. Plimpton.)

insurance Company has the duty of final approval or disapproval of applications to said company for life insurance?

A. One or more of the three members of the underwriting committee, depending upon the amount of insurance.

Q8. What has been your general training and experience in this line of work, and particularly in connection with the underwriting, acceptance or rejection of life insurance risks?

A. Actuarial training and work for 19 years with particular attention to underwriting during the last seven years.

Q9. What has been your general experience with regard to the usual practice of life insurance companies as to the underwriting, acceptance and rejection of life insurance risks pertaining to policies of life insurance?

A. General discussions with other actuaries and underwriters at various meetings over the last twelve years.

Q10. If you are familiar with it, please state what is the practice of life insurance companies generally with respect to the underwriting, acceptance, and rejection of life insurance risks.

A. The companies try to select such risks as will give a satisfactory mortality, and reject those risks which experience has proven provide increased mortality.

Q11. State what is the practice of 'The Columbian National Life Insurance Company in regard

(Deposition of Henry A. Plimpton.)

to the practices followed by other life insurance companies generally with respect to the underwriting, acceptance, or rejection of applications for policies of life insurance.

A. The practice of The Columbian is in line with the average of most companies, being neither too strict nor too lenient.

Q12. Did the company follow its usual practice in passing upon the application of Theodore W. Quandt for insurance?

A. Yes.

Q13. I hand you herewith what purports to be the original application for a policy of life insurance on the life of Theodore W. Quandt in the sum of \$15,000, bearing the date in part 1 "November 15, 1943", and in part 2 "November 13, 1943," and bearing the signature of Theodore W. Quandt, and ask you to state whether this document has heretofore been examined by you.

A. Yes.

Q14. Will you please hand the document just identified by you to the Notary Public and request that the same be marked Defendant's Exhibit 1 for Identification?

A. That has already been done.

Q15. Will you please state when and where you first saw the document which has been previously identified by you and marked by the Notary Public as Defendant's Exhibit 1 for Identification?

A. November 30, 1943; in my office.

(Deposition of Henry A. Plimpton.)

Q16. What action, if any, was taken by you with respect to the said application?

A. The application was approved.

Q17. What action, if any, was taken upon said application by The Columbian National Life Insurance Company, as a result of your action or that of any other official of the company?

A. The application was accepted and policy issued.

Q18. Did you, in approving the application herein marked as Defendant's Exhibit 1 for Identification, rely upon the information contained in said application?

A. Yes.

Q19. If you had disapproved the application marked herein as Defendant's Exhibit 1 for Identification, would the policy of life insurance numbered 275203 have been issued to Theodore W. Quandt by The Columbian National Life Insurance Company?

A. No.

Q20. I direct your attention to the application previously identified by you and marked as Defendant's Exhibit 1 for Identification, and particularly to the questions in part 2 thereof "Personal Statements made by Proposed Insured and Recorded by Medical Examiner", and particularly to the questions thereof numbered 1-a, 7-a, 7-b, 7-c, 9, 9-c, 9-d, 9-e and 10, and the answers to said questions, and ask you whether or not at the time you approved said application you had any informa-

(Deposition of Henry A. Plimpton.)

tion or knowledge other than that given by the answers to said questions?

A. No.

Q21. In approving said application for said policy of life insurance did you consider the answers to questions 1-a, 7-a, 7-b, and 7-c, 9, 9-c, 9-d, 9-e and 10 contained in part 2 of said application material to the risk insured against?

A. Yes.

Q22. If at the time said application was submitted to you you had known that the then present condition of health of Theodore W. Quandt was not good, what action would have been taken by you on said application?

A. I would have asked for further information.

Q23. If at the time said application for said policy of life insurance was approved by you you had known that the said Theodore W. Quandt was then suffering from and had been suffering from a serious illness, what action would have been taken by you?

A. I would have disapproved the application.

Q24. If at the time said application for insurance was submitted to you you had known that the said Theodore W. Quandt was suffering from a carcinoma of the colon, what action would have been taken by you?

A. I would have disapproved the application.

Q25. Please state by what name a carcinoma is generally known to the layman.

A. Cancer.

(Deposition of Henry A. Plimpton.)

Q26. If at the time said application was approved by you you had known that said Theodore W. Quandt had consulted a physician on or about March 11, 1943, for a complaint of pains around his heart, what action would have been taken by you on the said application?

A. I would have withheld approval pending receipt of further information.

Q27. If at the time said application for life insurance was approved by you you had known that said Theodore W. Quandt, commencing with the end of August, 1943, had suffered attacks of nausea which lasted about two days in duration, and which occurred once every six weeks, what action would have been taken by you on said application?

A. I would have withheld approval pending receipt of further information.

Q28. If at the time said application for said policy of life insurance was approved by you you had known that said Theodore W. Quandt prior to the date of said application and during the month of November had suffered from complaints of the urinary organs in that he was obliged to rise at night to pass urine, what action would have been taken by you on said application?

A. I would have withheld approval pending receipt of further information.

Q29. Please state the reasons for the answers given by you to the preceding questions.

A. The symptoms described indicate that the

(Deposition of Henry A. Plimpton.)

applicant might have had some condition tending to increase the risk.

In Answer to Cross Interrogatories Submitted to the Notary Public to be Propounded to the Witness

XQ1. If your answer to Interrogatory No. 11 is that you follow the practices of the other life insurance companies as well as The Columbian National Life Insurance Company in passing upon applications for life insurance, do those practices require you to reject an application if you knew at the time of passing upon the application that Theodore W. Quandt had a common cold on or about February 10, 1941?

A. No.

XQ2. Do you consider a common cold a bodily disease or infirmity?

A. Yes, but not serious.

XQ3. If Theodore W. Quandt had been afflicted with a common cold in February of 1941, and said common cold had passed away within a few days thereafter, would you say that Theodore W. Quandt was not in sound health at the time you passed upon his application for life insurance?

A. No. A common cold some time in the past would have no bearing upon his present condition.

XQ4. If at the time you passed upon the application of Theodore W. Quandt for life insurance, Defendant's Exhibit 1 for Identification, said application had disclosed that on February 10, 1941, he had a common cold which passed away within

(Deposition of Henry A. Plimpton.)

three or four days, would you have rejected the application?

A. Not for that reason.

XQ5. If said application, part 2, disclosed at the time you passed upon the application that Theodore W. Quandt had been afflicted with a common cold on February 10, 1941, for which his physician had prescribed four physio-therapy treatments, and that said Theodore W. Quandt had completely recovered by February 14, 1941, would you have rejected his application?

A. No, but we would have asked for information from the attending physician.

XQ6. If at the time you passed upon the application as set forth in Defendant's Exhibit 1 for Identification, said application had disclosed that on June 30, 1942, Theodore W. Quandt had complained to his physician that he was tired, and that the examining physician had reported his physical condition as negative, his hemoglobin 80 per cent, would you have considered that Theodore W. Quandt was at that time not in sound health?

A. Again I would have wanted further information.

XQ7. If at the time you passed upon the application as set forth in Defendant's Exhibit 1 for Identification, said application had disclosed that on June 30, 1942, Theodore W. Quandt had complained to his physician that he was tired, and that the examining physician had reported his physical condition as negative, his hemoglobin 80 per cent,

(Deposition of Henry A. Plimpton.)

would you at that time have rejected his application?

A. I would have withheld approval pending receipt of further information.

XQ8. If the application of Theodore W. Quandt for life insurance in Columbian National Life Insurance Company, Defendant's Exhibit 1 for Identification, had disclosed in addition to the other information that on March 11, 1943, Theodore W. Quandt had visited his physician and had stated that a friend of his died of heart trouble and that he, Theodore W. Quandt, had noticed a few pains around his heart, and that said physician had fluoroscoped his chest, which was negative, and that his hemoglobin was 85 per cent, and that the examination of his heart and lungs were negative, and that no medicine or treatment was prescribed, would you say that at the time you passed upon the application Theodore W. Quandt was not in sound health?

A. I would have needed further information.

XQ9. If the application of Theodore W. Quandt for life insurance in Columbian National Life Insurance Company, Defendant's Exhibit 1 for Identification, had disclosed in addition to the other information that on March 11, 1943, Theodore W. Quandt had visited his physician and had stated that a friend of his died of heart trouble and that he, Theodore W. Quandt, had noticed a few pains around his heart, and that said physician had fluoroscoped his chest, which was negative, and that

(Deposition of Henry A. Plimpton.)

his hemoglobin was 85 per cent, and that the examination of his heart and lungs was negative, and that no medicine or treatment was prescribed, would you have approved the application?

A. I would have withheld approval pending further information.

XQ10. If the application, part 2 of Defendant's Exhibit 1 for Identification, had in addition to the other information contained therein disclosed that on February 10, 1941, Theodore W. Quandt had a common cold which passed away completely in three days and that on June 30, 1942, said Theodore W. Quandt complained of being tired but that a physical examination was negative and his hemoglobin was 80 per cent, and that on March 11, 1943, said Theodore W. Quandt complained of a few pains around his heart and that a fluoroscope showed that his chest was negative and his hemoglobin 85 per cent, his heart and lungs by examination were negative, and no medicine or treatment was prescribed, would you have approved the application?

A. I would have withheld approval pending further information.

XQ11. Do you in passing upon applications for life insurance reject the application for temporary and passing ailments?

A. My action would depend upon the nature of the ailment and the possible indication of a permanent impairment.

XQ12. Do you consider the matters asked in

(Deposition of Henry A. Plimpton.)

this deposition under cross interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10, bodily disease or infirmity of the applicant?

A. With the exception of the common cold, they indicate that the applicant might not be in sound health.

XQ13. If at the time you passed upon the application, as set forth in Defendant's Exhibit 1 for Identification, Theodore W. Quandt was suffering from carcinoma of the colon, but Theodore W. Quandt did not know that he was suffering from such ailment, would you in that event have approved the application for life insurance?

A. No.

XQ14. If at the time of said application for said policy of life insurance, Defendant's Exhibit 1 for Identification, you had known that said Theodore W. Quandt had after the date of said application consulted a physician and complained of frequency of urine, and that said physician had advised that it was due to nervousness, that a sample of the urine by laboratory tests was completely negative, would you have rejected the application?

A. I would have withheld approval pending further information.

XQ15. Prior to answering the interrogatories and cross interrogatories herein, did anyone tell you or suggest to you what your answers should be?

A. No.

XQ16. Prior to answering the interrogatories and cross interrogatories propounded in this case,

(Deposition of Henry A. Plimpton.)

have you talked with anyone with reference to your answers? A. No.

XQ17. Did you have any consultation or discussion of any kind or character with anyone else whose deposition is being taken in this case with reference to the answers that you would give to said questions? A. No.

XQ18. In passing upon the application for life insurance for Theodore W. Quandt, Defendant's Exhibit 1 for Identification, did you consider the fact that on November 18, 1943, Theodore W. Quandt had consulted his physician complaining of frequency of urine? A. No.

HENRY A. PLIMPTON

Examining Room, Home Office, The Columbian
National Life Insurance Company, 77 Franklin
Street, Boston, Mass., Thursday, November 16,
1944, 11:30 a. m.

HUGH W. CRAWFORD,

a witness called on behalf of the defendant, having
been first duly cautioned and sworn, deposes and
says as follows:

In Answer to Direct Interrogatories Submitted to
the Notary Public to be Propounded to the
Witness

Q1. Please state your full name, age and place
of residence.

(Deposition of Hugh W. Crawford.)

A. My name is Hugh W. Crawford. I am 40 years of age. I reside at 17 Oakland Street, Wellesley Hills, Massachusetts.

Q2. What is your occupation or profession?

A. I am a physician employed by The Columbian National Life Insurance Company, 77 Franklin Street, Boston, as its medical director.

Q3. If you are a physician, please state of what school of medicine you are a graduate, the time of your graduation, and outline briefly your professional activity since the time of your graduation.

A. I was graduated from the University of Toronto, Toronto, Canada, in 1928. For the next year I was an interne at the Toronto General Hospital, doing general surgical and medical work. In October, 1929, I was appointed to the staff of the medical department of the Connecticut General Life Insurance Company, one of the large life insurance companies in Hartford. In 1935 I resigned from this position to become medical director of The Columbian National Life Insurance Company at Boston. During this period I also became a member of the Association of Life Insurance Medical Directors and a member of the medical section of the American Life Convention. Prior to the war these societies met annually to discuss matters pertaining to the selection of risks.

Q4. By whom are you employed?

A. I am employed by The Columbian National Life Insurance Company, Boston, Massachusetts.

(Deposition of Hugh W. Crawford.)

Q5. In what capacity are you employed, and for how long have you been employed in that capacity?

A. I have been employed in the capacity of medical director by The Columbian National Life Insurance Company for nine years.

Q6. Please state the nature of your duties in the capacities in which you are employed.

A. My duties consist of appointing medical examiners in our many branch offices. These medical examiners examine the applicants for insurance. In addition I pass on applications for life insurance, act on claims, and supervise the health of the employees of The Columbian National Life Insurance Company at the Home Office.

Q7. Who in The Columbian National Life Insurance Company has the duty of final approval or disapproval of applications to said company for life insurance?

A. The president or his representative Mr. Plimpton, the chief underwriter Mr. Sitgreaves, and myself.

Q8. What has been your general training and experience in this line of work, and particularly in connection with the underwriting, acceptance or rejection of life insurance risks?

A. I have been especially trained for this particular kind of work, and have had fifteen years of experience in selecting risks. In 1929 I began my work by examining applicants for life insurance at the Home Office of the Connecticut General Life Insurance Company. I also supervised the

(Deposition of Hugh W. Crawford.)

laboratory at that office. At the same time I began acting on small applications for life insurance, and as my experience grew, I passed on applications for large amounts of life insurance. Furthermore, I have had experience in selecting risks for accident and health insurance and for re-insurance. My work at the Columbian has been a continuation of this work.

Q9. What has been your general experience with regard to the usual practice of life insurance companies as to the underwriting, acceptance and rejection of life insurance risks pertaining to policies of life insurance?

A. In general I am familiar with their practices.

Q10. If you are familiar with it, please state what is the practice of life insurance companies generally with respect to the underwriting, acceptance, and rejection of life insurance risks.

A. Companies vary in their underwriting practice. Some companies are liberal. Some companies are strict. Some companies issue insurance to only first-class risks. Others issue risks to impaired risks, but charge an extra premium for the risk they assume.

Q11. State what is the practice of The Columbian National Life Insurance Company in regard to the practices followed by other life insurance companies generally with respect to the underwriting, acceptance, or rejection of applications for policies of life insurance.

(Deposition of Hugh W. Crawford.)

A. The Columbian tries not to be too liberal nor too strict. In general we follow a middle-of-the-road policy.

Q12. Did the company follow its usual practice in passing upon the application of Theodore W. Quandt for insurance? A. Yes.

Q13. I hand you herewith what purports to be the original application for a policy of life insurance on the life of Theodore W. Quandt in the sum of \$15,000, bearing the date in part 1 "November 15, 1943," and in part 2 "November 13, 1943," and bearing the signature of Theodore W. Quandt, and ask you to state whether this document has heretofore been examined by you.

A. Yes; it has heretofore been examined by me.

Q14. Will you please hand the document just identified by you to the Notary Public and request that the same be marked Defendant's Exhibit 1 for Identification?

A. That has already been done by another witness.

Q15. Will you please state when and where you first saw the document which has previously been identified by you and marked by the Notary Public as Defendant's Exhibit 1 for Identification?

A. I first saw this document at the Home Office of The Columbian National Life Insurance Company in Boston on November 27th, 1943.

Q16. What action, if any, was taken by you with respect to the said application?

A. I approved the application at standard rates.

(Deposition of Hugh W. Crawford.)

Q17. What action, if any, was taken upon said application by The Columbian National Life Insurance Company, as a result of your action or that of any other official of the Company?

A. The Columbian National Life Insurance Company approved the application at standard rates after it had been approved by Mr. Sitgreaves, Mr. Plimpton, and myself.

Q18. Did you, in approving the application herein marked as Defendant's Exhibit 1 for Identification, rely upon information contained in said application? A. Yes.

Q19. If you had disapproved the application marked herein as Defendant's Exhibit 1 for Identification, would the policy of life insurance numbered 275203 have been issued to Theodore W. Quandt by The Columbian National Life Insurance Company?

A. The policy would not have been issued.

Q20. I direct your attention to the application previously identified by you and marked as Defendant's Exhibit 1 for Identification, and particularly to the questions in part 2 thereof "Personal Statements made by Proposed Insured and Recorded by Medical Examiner", and particularly to the questions thereof numbered 1-a, 7-a, 7-b, and 7-c, 9, 9-c, 9-d, 9-e, and 10, and the answers to said questions, and ask you whether or not at the time you approved said application you had any information or knowledge other than that given by the answers to said questions?

(Deposition of Hugh W. Crawford.)

A. By "other information" I presume you mean different. I had none. I did, however, have a statement from Mr. Quandt's attending physician, Dr. Mitchell, dated November 18, 1943, which read as follows:

"Applicant has been examined several times in past 3-4 years and is in excellent physical condition."

However, I would not have accepted this statement at its face value if I had learned during our investigation that Mr. Quandt had suffered from pains around the heart, was obliged to get up at night to pass his urine, and had complained of being tired. I would have written to Dr. Mitchell asking him for complete details about these matters.

Q21. In approving said application for said policy of life insurance did you consider the answers to questions 1-a, 7-a, 7-b, and 7-c, 9, 9-c, 9-d, 9-e and 10 contained in part 2 of said application material to the risk insured against? A. Yes.

Q22. If at the time said application was submitted to you you had known that the then present condition of health of Theodore W. Quandt was not good, what action would have been taken by you on said application?

A. I would not have approved the application.

Q23. If at the time said application for said policy of life insurance was approved by you you had known that the said Theodore W. Quandt was then suffering from and had been suffering from a

(Deposition of Hugh W. Crawford.)

serious illness, what action would have been taken by you?

A. I would have declined his application.

Q24. If at the time said application for insurance was submitted to you you had known that the said Theodore W. Quandt was suffering from a carcinoma of the colon, what action would have been taken by you?

A. I would have rejected his application.

Q25. Please state by what name a carcinoma is generally known to the layman. A. Cancer.

Q26. If at the time said application was approved by you you had known that said Theodore W. Quandt had consulted a physician on or about March 11, 1943, for a complaint of pains around his heart, what action would have been taken by you on the said application?

A. I would not have approved his application. Instead I would have written to the attending physician to determine the probable cause of the pain around his heart. Depending on his reply, I would then have decided whether or not an additional investigation, which would have included an examination by a cardiologist, an x-ray, and an electrocardiogram, would have been necessary. From my experience I know that pains around the heart are often suggestive of heart disease, especially when the applicant is over 50 years of age and when he applies for a substantial amount of insurance. I would have conducted a very thorough

(Deposition of Hugh W. Crawford.)

investigation to satisfy myself about the nature of the pains around his heart.

Q27. If at the time said application for life insurance was approved by you you had known that said Theodore W. Quandt, commencing with the end of August, 1943, had suffered attacks of nausea which lasted about two days in duration, and which occurred once every six weeks, what action would have been taken by you on said application?

A. I would not have approved his application at standard rates.

Q28. If at the time said application for said policy of life insurance was approved by you you had known that said Theodore W. Quandt prior to the date of said application and during the month of November had suffered from complaints of the urinary organs in that he was obliged to rise at night to pass urine, what action would have been taken by you on said application?

A. I would have conducted an investigation to determine why it was necessary for Mr. Quandt to rise at night to pass his urine. It is not normal for a man to rise at night to pass his urine unless he has taken a large amount of fluid before retiring, and consequently I would have considered him a poor risk. During the past three or four years I have had to consider this matter of an applicant rising at night to pass his urine on other applications. I have discussed it with various medical men, one especially who is an assistant professor at one

(Deposition of Hugh W. Crawford.)

of our medical colleges. This colleague tells me he is convinced that many of these applicants suffer from heart trouble. Realizing then that because Mr. Quandt was rising to pass his urine he might have been suffering from heart trouble, I would also have requested an electrocardiogram.

Q29. Please state the reasons for the answers given by you to the preceding questions.

A. I believe my reasons have been covered in the preceding questions. Suffice it to say I have had a long experience in dealing with applicants and their various disorders. I know that we cannot disregard conditions which may be a sign of deep-seated disease.

In Answer to Cross-Interrogatories Submitted to
the Notary Public to Be Propounded to the
Witness

XQ1. If your answer to Interrogatory No. 11 is that you follow the practices of the other life insurance companies as well as The Columbian National Life Insurance Company, in passing upon the applications for life insurance, do those practices require you to reject an application if you knew at the time of passing upon application that Theodore W. Quandt had a common cold on about February 10, 1941?

A. The practices of other companies and of The Columbian do not make it necessary for us to reject an application for life insurance because the applicant has suffered from a common cold from

(Deposition of Hugh W. Crawford.)

which he has recovered some months prior to the date of his application for insurance. We would therefore not have rejected Mr. Quandt's application for insurance simply because he had a common cold on that date from which he recovered in a few days.

XQ2. Do you consider a common cold a bodily disease or infirmity?

A. I consider it a bodily disease.

XQ3. If Theodore W. Quandt had been afflicted with a common cold in February of 1941, and said common cold had passed away within a few days thereafter, would you say that Theodore W. Quandt was not in sound health at the time you passed upon his application for life insurance?

A. I would say that the common cold in February, 1941, had no bearing on his state of health in November, 1943. His physical condition could become worse during that period of time.

XQ4. If at the time you passed upon the application of Theodore W. Quandt for life insurance, Defendant's Exhibit 1 for Identification, said application had disclosed that on February 10, 1941, he had a common cold which passed away within three or four days, would you have rejected the application?

A. I would not have rejected the application.

XQ5. If said application, part 2, disclosed at the time you passed upon the application that Theodore W. Quandt had been afflicted with a common cold on February 10, 1941, for which his

(Deposition of Hugh W. Crawford.)

physician had prescribed four physio-therapy treatments, and that said Theodore W. Quandt had completely recovered by February 14, 1941, would you have rejected his application?

A. I would not have rejected his application because of a common cold.

XQ6. If at the time you passed upon the application as set forth in Defendant's Exhibit 1 for Identification, said application had disclosed that on June 30, 1942, Theodore W. Quandt had complained to his physician that he was tired, and that the examining physician had reported his physical condition as negative, his hemoglobin 80 per cent, would you have considered that Theodore W. Quandt was at that time not in sound health?

A. If you mean by examining physician our medical examiner in San Francisco, I would probably have regarded Mr. Quandt as being in sound health when I was asked to pass on his application; but if you mean that the examining physician was his own attending physician, I would not have considered him in sound health but would have conducted an investigation with a view to learning the cause of his fatigue, and whether or not he had recovered from his feeling of tiredness. Furthermore, I would want to know if his hemoglobin had remained stationary, had improved, or had got worse. Moreover, I would like to know if he showed any evidence of anemia.

XQ7. If at the time you passed upon the application as set forth in Defendant's Exhibit 1 for

(Deposition of Hugh W. Crawford.)

Identification, said application had disclosed that on June 30, 1942, Theodore W. Quandt had complained to his physician that he was tired, and that the examining physician had reported his physical condition as negative, his hemoglobin 80 per cent, would you at that time have rejected his application?

A. If you mean by examining physician our medical examiner in San Francisco, I believe I might have approved the application either at standard or sub-standard rates. If you mean his attending physician, then I would have conducted a further investigation, because a hemoglobin of 80 per cent of normal—that is, four-fifths of normal—might be an indication that he was suffering from a beginning anemia, and that his feeling of fatigue was due to this. Furthermore, a hemoglobin as low as 80 per cent might be a warning that he was suffering from some deep-seated condition which was causing a beginning anemia and a feeling of fatigue. I would therefore want to know whether or not he had recovered from his feeling of fatigue and whether his hemoglobin had returned to normal. Moreover, as there are different ways of determining the hemoglobin of the blood, I would want to know what method was used. In this instance, I would not have rejected his application because I was conducting an investigation.

XQS. If the application of Theodore W. Quandt for life insurance in Columbian National Life Insurance Company, Defendant's Exhibit 1 for Identi-

(Deposition of Hugh W. Crawford.)

fication, had disclosed in addition to the other information that on March 11, 1943, Theodore W. Quandt had visited his physician and had stated that a friend of his died of heart trouble and that he, Theodore W. Quandt, had noticed a few pains around his heart, and that said physician had fluoroscoped his chest, which was negative, and that his hemoglobin was 85 per cent, and that the examination of his heart and lungs were negative, and that no medicine or treatment was prescribed, would you say that at the time you passed upon the application Theodore W. Quandt was not in sound health?

A. I would be suspicious that he was not in sound health, because there is no mention made of an electrocardiogram. From experience I know we cannot overlook the pains around the heart as a cause of heart disease in men over 50 years of age, and I believe an electrocardiogram absolutely necessary in these cases.

XQ9. If the application of Theodore W. Quandt for life insurance in Columbian National Life Insurance Company, Defendant's Exhibit 1 for Identification, had disclosed in addition to the other information that on March 11, 1943, Theodore W. Quandt had visited his physician and had stated that a friend of his died of heart trouble, and that he, Theodore W. Quandt, had noticed a few pains around his heart, and that said physician had fluoroscoped his chest, which was negative, and that his hemoglobin was 85 per cent, and that the exami-

(Deposition of Hugh W. Crawford.)

nation of his heart and lungs was negative, and that no medicine or treatment was prescribed, would you have approved the application?

A. We would not have approved the application. Instead we would have requested a special examination of Mr. Quandt by a cardiologist, who would not only x-ray his heart but would also take an electrocardiogram.

XQ10. If the application, part 2 of Defendant's Exhibit 1 for Identification, had in addition to the other information contained therein disclosed that on February 10, 1941, Theodore W. Quandt had a common cold which passed away completely in three days and that on June 30, 1942, said Theodore W. Quandt complained of being tired but that a physical examination was negative and his hemoglobin was 80 per cent, and that on March 11, 1943, said Theodore W. Quandt complained of a few pains around his heart and that a fluoroscope showed that his chest was negative and his hemoglobin 85 per cent, his heart and lungs by examination were negative and no medicine or treatment was prescribed, would you have approved the application?

A. I would not have approved the application. I would have requested a special examination by a heart specialist in San Francisco, and I would have instructed him not only to obtain full details concerning the severity, location, and nature of the pains, but I would also have asked him to be sure to x-ray Mr. Quandt's heart and take an electrocardiogram.

(Deposition of Hugh W. Crawford.)

XQ11. Do you in passing upon applications for life insurance reject the application for temporary and passing ailments?

A. I do not reject an application for life insurance for temporary and passing ailments provided the ailments are temporary, have passed, and are not indicative of deep-seated disease.

XQ12. Do you consider the matters asked in this deposition under cross-interrogatories 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 bodily disease or infirmity of the applicant?

A. I regard the common cold as a bodily disease. I regard the feeling of fatigue, the hemoglobin of 80 per cent, and the history of pains around the heart not as bodily diseases or infirmities themselves but signs and symptoms of bodily disease.

XQ13. If at the time you passed upon the application as set forth in Defendant's Exhibit 1 for Identification, Theodore W. Quandt was suffering from carcinoma of the colon, but Theodore W. Quandt did not know that he was suffering from such ailment, would you in that event have approved the application for life insurance?

A. We would not have approved the application. We would have rejected it.

XQ14. If at the time of said application for said policy of life insurance, Defendant's Exhibit 1 for Identification, you had known that said Theodore W. Quandt had after the date of said application consulted a physician and complained of frequency of urine, and that said physician had advised that

(Deposition of Hugh W. Crawford.)

it was due to nervousness, that a sample of the urine by laboratory tests was completely negative, would you have rejected the application?

A. There again I would not have approved the application knowing that Mr. Quandt had suffered from frequency of urine. I would have conducted an investigation with a view to learning what our examiner, not the attending physician, thought was the cause of the frequency, and I would be guided by his opinion. Furthermore, I would ask him to learn why Mr. Quandt was nervous, and if his nervousness was caused by some disease such as a goiter. There are many causes for frequency of the urine, such as diabetes, kidney trouble, and circulatory disease. So it would be necessary for us to satisfy ourselves as to the cause of the frequency. Under the circumstances I would not have rejected the application while I was conducting the investigation.

XQ15. Prior to answering the interrogatories and cross-interrogatories herein, did anyone tell you or suggest to you what your answers should be?

A. No.

XQ16. Prior to answering the interrogatories and cross-interrogatories propounded in this case, have you talked with anyone with reference to your answers?

A. Yes.

XQ17. Did you have any consultation or discussion of any kind or character with any one else whose deposition is being taken in this case with

(Deposition of Hugh W. Crawford.)

reference to the answers that you would give to said questions?

A. No; except that before the interrogatories were prepared I did have a discussion of a general nature.

XQ18. In passing upon the application for life insurance for Theodore W. Quandt, Defendant's Exhibit 1 for Identification, did you consider the fact that on November 18, 1943, Theodore W. Quandt had consulted his physician complaining of frequency of urine?

A. I did not know that Mr. Quandt had consulted his physician on November 18, 1943, because of frequency of urination.

HUGH W. CRAWFORD.

Commonwealth of Massachusetts

November 27, 1944

Suffolk—ss.

I, Emilie Burford Murray, Notary Public before whom the foregoing depositions were taken on behalf of the defendant on November 15 and 16, 1944, hereby certify that the witness William L. Sitgreaves, upon reading his deposition and before signing it, made the following statement:

"Inasmuch as the original application, which has been marked Defendant's Exhibits 1-A and 1-B for Identification, is part of the Company's official records, I request that the photostatic copies which I

hand you at this time be substituted for the original application, and state that they are true copies of the two parts of the application.”

I further certify that the witness Henry A. Plimpton, upon reading his deposition and before signing it, made the following statement:

“On reading cross-interrogatory No. 16, I think I misunderstood this question, and therefore request that the answer be changed to ‘Yes.’”

In Testimony Whereof I hereunto set my hand and affix my seal of office at Boston in said Commonwealth of Massachusetts this 27th day of November, 1944.

[Seal] EMILIE BURFORD MURRAY,
Notary Public.

Commonwealth of Massachusetts

November, 1944

Suffolk—ss.

I, Emilie Burford Murray, a Notary Public within and for the Commonwealth of Massachusetts, do hereby certify that the foregoing depositions of Hugh W. Crawford, William L. Sitgreaves, Henry A. Plimpton, and Ralph E. Pierce were taken on behalf of the defendant in the case of A. Quandt & Sons, plaintiff, v. The Columbian National Life Insurance Company, defendant, No. 23581-G on the docket of the District Court of the United States for the Northern District of California, Southern Division, pursuant to stipulation of counsel, which is hereto annexed, and upon written interrogatories

submitted by counsel for the plaintiff and counsel for the defendant, before me, in the Offices of The Columbian National Life Insurance Company, 77 Franklin Street, Boston, Massachusetts, on Wednesday, November 15, 1944, and Thursday, November 16, 1944; that each of said witnesses was by me duly cautioned and sworn before the commencement of his testimony; that the testimony of said witnesses was taken stenographically by me and subsequently transcribed under my direction; that neither the plaintiff nor the defendant was represented in the taking of said depositions; that each of said witnesses subsequently read and signed his deposition; that photostatic copies of the document marked Defendant's Exhibit 1-A for Identification and Defendant's Exhibit 1-B for Identification are hereto attached; and that I am not connected by blood or marriage with any of the parties to the above entitled action, nor interested directly or indirectly in the matter in controversy.

In Testimony Whereof I hereunto set my hand and affix my seal of office at Boston in said Commonwealth of Massachusetts this 27th day of November, 1944.

[Seal]

EMILIE BURFORD MURRAY,
Notary Public.

[Endorsed]: Filed Nov. 30, 1944.

[Endorsed]: No. 11152. United States Circuit Court of Appeals for the Ninth Circuit. The Columbian National Life Insurance Company, a Corporation, Appellant, vs. A. Quandt & Sons, a Copartnership, Appellee. Transcript of Record. Upon Appeal from the District Court of the United States for the Northern District of California, Southern Division.

Filed October 5, 1945.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

In the United States Circuit Court of Appeals for
the Ninth Circuit

No. 11152

A. QUANDT & SONS,

Appellee,

vs.

THE COLUMBIAN NATIONAL LIFE INSURANCE COMPANY, a corporation,
Appellant.

STATEMENT OF POINTS RELIED UPON
ON APPEAL AND DESIGNATION
RECORD

The policy on which judgment was awarded against the appellant provided in the application therefor:

“It is agreed as follows: 1. That the insurance hereby applied for shall not take effect until the issuance and delivery of the policy and the payment of the first premium thereon while the proposed insured is in sound health.”

It is uncontradicted that the proposed insured had a cancer at the time referred to. He therefore was not in sound health, and the insurance never took effect. The judgment upon the policy against appellant therefore is in error.

The appellant hereby designates for printing the entire transcript.

KEESLING & KEIL,
FRANCIS CARROLL,

Attorneys for Appellant.

[Endorsed]: Filed October 9, 1945. Paul P.
O'Brien, Clerk.

